

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 RUBEN HERNANDEZ
11 May 4, 2018, and May 7, 2018
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1 May 4, 2018

2 THE COURT: Mr. Beck, does the Government
3 have its next witness or evidence?

4 MR. BECK: Yes, Your Honor. The United
5 States called Ruben Hernandez.

6 MR. BURKE: Your Honor, may we approach?

7 THE COURT: You may.

8 (The following proceedings were held at
9 the bench.)

10 MR. BURKE: Your Honor, I was slipped a
11 note, indicating that you might show a video, and I
12 think we're going to need to talk about what that
13 is, you know, what portion of it or what length it
14 is. Because we don't -- we're not really sure,
15 because it comes from -- I'm sure they're not
16 showing the 12 hours; and then we would have some
17 concerns about completeness. This might be an issue
18 that we should talk through, not in the presence of
19 the jury.

20 Here comes the witness.

21 THE COURT: What's your thoughts on this?

22 MR. BECK: Frankly, I don't know a whole
23 lot. It's a video of the cell when he put the paper
24 towels over the camera. I don't know how much we
25 intend to show. I didn't know I was bringing it in

1 until this morning. But I think we intend to show
2 probably a couple minutes, somewhere between five
3 and 15, of him covering and uncovering the cameras
4 of the cell.

5 THE COURT: He's the one that had the
6 crutches?

7 MR. BECK: Yes.

8 THE COURT: Is that something that's
9 coming up pretty quick?

10 MR. BECK: I doubt it. I would be very
11 surprised if we get to it tonight.

12 MR. BURKE: Okay.

13 THE COURT: Can you look at it over the
14 weekend?

15 MR. BURKE: We can figure it out.

16 THE COURT: It sounds like a short clip.

17 MR. BECK: It may or may not be. I'm not
18 calling those shots.

19 THE COURT: Does that work for you, Mr.
20 Burke?

21 MR. BURKE: Yes.

22 (The following proceedings were held in
23 open court.)

24 THE COURT: All right. Mr. Hernandez, if
25 you'll raise your right hand to the best of your

1 ability there, Ms. Soliz, my courtroom deputy, will
2 swear you in.

3 RUBEN HERNANDEZ,
4 after having been first duly sworn under oath,
5 was questioned, and testified as follows:

6 THE CLERK: Please state your name, and
7 spell your last name for the record.

8 THE WITNESS: H-E-R-N-A-N-D-E-Z.

9 THE COURT: Mr. Hernandez, if you'll scoot
10 your chair up just a little bit so that your mouth
11 is pretty close -- there we go. All right.

12 Mr. Beck.

13 MR. BECK: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. BECK:

16 Q. Good afternoon, Mr. Hernandez. Are you
17 now, or have you ever been, a member of the
18 Sindicato de Nuevo Mexico prison gang?

19 A. Yes, sir.

20 Q. When did you join the SNM?

21 A. About a year prior to going to Southern,
22 when this incident occurred.

23 Q. And by "this incident," do you mean the
24 Fred Sanchez murder?

25 A. Yes, sir.

1 Q. So were you brought into the SNM about a
2 year before that time?

3 A. Yes, sir.

4 Q. Where were you when you were brought in?

5 A. It started in the county jail, and then I
6 started -- my buddies started telling me -- they
7 gave me their blessings. And as I went from
8 facility to facility, each one, each facility I
9 would go to, the person that was in charge there
10 would give me a blessing.

11 Q. Were you brought in, or at least
12 partially, by an SNM member named Smurf?

13 A. Partially, yes, sir.

14 Q. And where was that?

15 A. That was at the North.

16 Q. Was that the PNM North facility in Santa
17 Fe?

18 A. Yes, sir.

19 Q. Was it Smurf, Leroy Lucero, who taught you
20 about the SNM Gang and its rules?

21 A. Yes, sir.

22 Q. Why did you join the SNM prison gang?

23 A. For protection from the other gangs.

24 Q. Why did you feel like you needed
25 protection?

1 A. Because I told on somebody from the other
2 gang.

3 Q. Is there any SNM rule about telling on
4 somebody even if they're from a rival gang?

5 A. Yes, sir.

6 Q. What is that rule?

7 A. They can kill you, stab you, beat you up.
8 It's their choice. But they don't -- it's a no-no.

9 Q. Before you joined the SNM, were you a
10 member of any street gang?

11 A. Yes, sir.

12 Q. What gang is that?

13 A. The West Side Locos.

14 Q. And where is the West Side Locos Gang?
15 Where were you?

16 A. Clovis, New Mexico.

17 Q. When did you leave the SNM prison gang?

18 A. The next day after Freddie Sanchez was
19 killed.

20 Q. So you left the gang the day after Freddie
21 Sanchez was killed?

22 A. Yes, sir.

23 Q. Have you ever heard the term "earning your
24 bones" or "earning your huesos"?

25 A. Yes, sir.

1 Q. What does that mean?

2 A. It means you have to stab somebody to get
3 your place in the SNM.

4 Q. And how did you earn your bones to get
5 into the SNM?

6 A. I hadn't earned any bones.

7 THE COURT: Mr. Hernandez, I'm going to
8 ask you to move back just a little bit. People will
9 be able to hear you a little better. Try that.

10 A. I hadn't earned any bones. I never
11 stabbed anybody for them, so --

12 Q. I'm going to show you a couple photos.

13 MR. BECK: And before I do that, let me
14 find out if they're in evidence, 319 through 322?

15 Q. Hearing yes, I'll start by showing you
16 319. Do you recognize who is in that photograph?

17 A. Yes, sir.

18 Q. Is that you?

19 A. Yes, sir.

20 Q. And here on December 3rd, 2015, were you
21 arrested in connection with this case?

22 A. Yes, sir.

23 Q. I'm going to show you Government's Exhibit
24 320. What is this a photograph of?

25 A. That's my nickname right there. Smoke.

1 Cosmic is not on the inside.

2 Q. Are these tattoos on your arm? I should
3 ask a better question.

4 A. Yes, sir.

5 Q. And you said your nickname. What nickname
6 do you go by, or did you go by in the SNM?

7 A. They called me Bolo.

8 Q. I'll show you Government's Exhibit 321.
9 Is this another photo of the tattoos on your right
10 arm?

11 A. Yes, sir.

12 Q. And Government's Exhibit 322. What is
13 this a tattoo of?

14 A. My street gang.

15 Q. Does "WSL" stand for West Side Locos?

16 A. Yes, sir.

17 MR. BECK: I'm going to move to admit
18 Government's Exhibit 313, which is Mr. Hernandez's
19 pen pack.

20 THE COURT: Any objection from any
21 defendant? Not seeing or hearing any, Government's
22 Exhibit 313 will be admitted into evidence.

23 (Government Exhibit 313 admitted.)

24 BY MR. BECK:

25 Q. Will you please put up Government's

1 Exhibit 313. Thank you.

2 Mr. Hernandez, do you recognize -- have
3 you ever seen this document before? And if you're
4 having trouble seeing it, it's there on the monitor
5 to your left. It may help a little bit. And if you
6 haven't, that wouldn't surprise me.

7 A. No, sir, I haven't.

8 Q. Is that your name and your Corrections
9 Department number there that I've circled in red on
10 313?

11 A. Yes, sir.

12 Q. I'm going to take you to what I think is
13 the fourth page of that document, at Bates No. 8716.
14 Do you recognize and have you seen this document
15 before?

16 A. Yes, sir.

17 Q. And in June of 1995 were you sentenced,
18 for violating your parole, to 18 months in prison?

19 A. I was on probation, I believe, and I
20 violated the probation, and they sent me to prison.

21 Q. Probation. Sorry. Yes.

22 A. Yes.

23 Q. And is this the order sending you to
24 prison for that?

25 A. Yes, sir, I believe so.

1 Q. I'm going to show you Bates No. 8721 of
2 Government's Exhibit 313. Is this a judgment,
3 sentence and commitment from 2005 for a plea of no
4 contest to delivery of a counterfeit substance
5 within a drug-free school zone?

6 A. Yes.

7 Q. And for this, were you sentenced to three
8 years incarceration?

9 A. I don't know how many years. I know I had
10 a few felonies there, and they gave me, with all of
11 them together combined, a total of 12 years.

12 Q. Okay. And so I'll show you Government's
13 Exhibit 313 at page 8723. Do you recognize this as
14 a judgment, sentence and commitment that was filed
15 on the same day as the one we just looked at, for
16 possession of a firearm or destructive device by a
17 felon, and breaking and entering?

18 A. Yes, sir.

19 Q. And I'll show you Government's Exhibit 313
20 at Bates 8725. Is this a judgment, sentence, and
21 commitment filed on the same day, in this case for
22 burglary of a dwelling house?

23 A. Yes, sir.

24 Q. And on this -- I think you just mentioned
25 this. Does it reflect that you're being sentenced

1 in four different cases here for these judgments and
2 commitments?

3 A. Yes, sir.

4 Q. And then finally, Government's 8728. Do
5 you recognize this as another judgment, sentence,
6 and commitment that was filed on the same day,
7 January 24, 2005?

8 A. Yes, sir.

9 Q. And in this one, based on a guilty plea,
10 did you plead guilty to aggravated burglary with a
11 deadly weapon, and conspiracy to commit a violent
12 felony, possession of a firearm, destructive device
13 by a felon?

14 A. Yes, sir.

15 Q. And if we can go to the next page. So in
16 this fourth simultaneous judgment and sentence, does
17 this reflect that you were sentenced to nine years
18 in Count 1, 18 months in Count 3, 18 months in Count
19 5, all to run consecutively for a total term of 12
20 years?

21 A. Yes, sir.

22 Q. And was that sentence run concurrently
23 with the other three judgments that we just looked
24 at?

25 A. Yes, sir.

1 Q. Thank you. That last judgment and
2 sentence of 12 years, is that the term that you were
3 serving when you were arrested on this case?

4 A. No, sir.

5 Q. Why were you in prison when you were
6 arrested on this case? Or were you?

7 A. Oh, yes, I was in prison. Yes, sir.

8 Q. What is the nature or purpose of the SNM?

9 A. To control where they're at, drugs,
10 respect, power, whatever they can get.

11 Q. And what's the nature or what types of
12 crimes does the SNM commit?

13 A. Murder, kidnapping, burglaries,
14 drug-dealing, assaults, stabbings. Almost any crime
15 you can think of.

16 Q. At some point after you were charged in
17 this case on December 3rd of 2015, did you agree to
18 cooperate with law enforcement?

19 A. Yes, sir.

20 Q. When was that?

21 A. The day they arrested me.

22 Q. After that time, were you signed up as a
23 confidential human source by the FBI?

24 A. I don't know if I was signed up. I had --
25 they talked with me, but I never signed. I don't

1 remember signing anything, no.

2 Q. Did you ever receive payments for the
3 information that you provided to the FBI?

4 A. No, sir.

5 Q. Did you receive money on your books for
6 information you provided to the FBI?

7 A. Yes, sir.

8 Q. And did you also receive -- did you
9 receive any other benefits from your cooperation,
10 including additional jail calls for a Level 6
11 inmate?

12 A. No, sir.

13 Q. At some point was the money that was put
14 on your books as a CHS, did that stop?

15 A. Yes, sir.

16 Q. And why did that stop?

17 A. Because of my tablet.

18 Q. What happened with your table?

19 A. My tablet had Wi-Fi.

20 Q. How did your tablet come to have Wi-Fi on
21 it?

22 A. One of the guys in the pod with us said he
23 knew how to put Wi-Fi on there, so I asked him to
24 put it on there for me.

25 Q. And when you were able to get Wi-Fi on

1 your tablet, what happened to the discovery on your
2 tablet?

3 A. It was erased.

4 Q. What did you do with your tablet when you
5 accessed Wi-Fi?

6 A. I went onto Facebook.

7 Q. Did you do anything else on the internet
8 when you had Wi-Fi on your tablet?

9 A. I tried. I didn't know how to get on
10 there. The guy that did it for me, he was showing
11 me, but in my room the signal wasn't strong enough.
12 And so if I wanted anything, he would download for
13 me. But mostly just Facebook.

14 Q. Who was the person who downloaded stuff
15 for you and showed you how to get into your tablet?

16 A. Roy Martinez.

17 Q. When you reset your tablet, did you know
18 that was a violation of the Court's order?

19 A. Yes.

20 Q. Did you also, during the time that you
21 agreed to cooperate, from the time you were arrested
22 until today, did you also do drugs while
23 incarcerated?

24 A. Yes, sir.

25 Q. What did you do?

1 A. I did some meth.

2 Q. With whom did you do meth?

3 A. With Benjamin Clark.

4 Q. Did you do any other drugs while you were
5 cooperating?

6 A. Yes, sir.

7 Q. What else did you do?

8 A. Suboxone.

9 Q. And with whom did you do Suboxone?

10 A. With Benjamin Clark and a couple of --
11 almost everybody that was in the pod.

12 Q. Were you allowed to do Suboxone and meth?

13 A. Was I allowed to? No, I wasn't supposed
14 to.

15 Q. I want to take you to June of 2007. Where
16 were you incarcerated in June of 2007?

17 A. That would be in Las Cruces.

18 Q. And which pod were you in here in Las
19 Cruces?

20 A. The blue pod.

21 Q. I'm going to show you Government's Exhibit
22 649. Mr. Hernandez, do you recognize Government's
23 Exhibit 649 as an aerial view of the Southern New
24 Mexico Correctional Facility?

25 A. Yes, sir.

1 Q. In June of 2007 were you housed down here
2 in the bottom left, in housing unit 1-A?

3 A. Yes, sir.

4 Q. I'm going to show you Government's Exhibit
5 281. In June of 2007 you were an SNM member, right?

6 A. Yes, sir.

7 Q. As an SNM member, did you know who were
8 the keyholders or llaveros in the SNM pod here at
9 Southern?

10 A. When I first got there, in my pod I
11 thought it was -- I thought it was Brian Rascon.
12 And then the one that was running the whole unit was
13 Ern Dog. And I don't know Ern Dog's real name, but
14 Ern Dog and Frankie Gonzalez.

15 Q. And which pod were Ern Dog and Frankie
16 Gonzalez in?

17 A. They were -- I don't know. I can't
18 remember the color, but it was -- they were in green
19 pod.

20 Q. And I think you said this earlier. In
21 Government's Exhibit 281, you were down here in the
22 bottom left in blue pod; is that right?

23 A. Yes, sir.

24 Q. Was there a keyholder, llavero, in yellow
25 pod?

1 A. I'm not for sure, but I think it was Loco.

2 Q. And do you know Loco's name?

3 A. Paul.

4 Q. Is it Paul Silva?

5 A. Yes, sir.

6 Q. Was Ben Clark incarcerated with you down
7 here in 2007?

8 A. Yes, sir. But when I first got there, he
9 wasn't here. He wasn't there but a few months.

10 Q. And what happened when Mr. Clark arrived?

11 A. When he got there, I didn't know who he
12 was. But everybody showed him respect, and when he
13 said something, they listened.

14 Q. And I just want to make sure I heard you.
15 Did you say when he said something, everyone
16 listened?

17 A. Yes, sir.

18 Q. I'm going to show you Government's Exhibit
19 249. Do you recognize this photo as the inside of
20 the blue pod in housing unit 1-A?

21 A. Yes, sir.

22 Q. And in June of 2007, which cell were you
23 in?

24 A. I was in the cell right under that
25 stairway there, on the left side.

1 Q. All right. So I'm going to circle on the
2 left side of Government's Exhibit 249, right below
3 the 1-A, where it says "1A-B pod" on the left. Was
4 that the cell you were in?

5 A. Yes, sir.

6 Q. Is that cell 109?

7 A. Yes, sir. I don't remember the number. I
8 just remember that was home for a year.

9 Q. And who was housed next to you?

10 A. They put Cyclone next to me, Benjamin
11 Clark.

12 Q. So is that the cell just to the right of
13 the cell that you were in?

14 A. Yes, sir.

15 Q. At some point in June of 2007, after
16 Cyclone or Benjamin Clark arrived, did you come to
17 find out that there was paperwork that entered the
18 blue pod?

19 A. Yes, sir.

20 Q. What is paperwork?

21 A. Somebody telling in black and white, court
22 papers saying that they told on somebody, or a
23 statement that was written.

24 Q. And what does it mean if there is
25 paperwork of a statement of somebody telling, in an

1 SNM pod?

2 A. It means you're no good. That means
3 you're --

4 Q. And what happens if someone is no good?

5 A. They get hit.

6 Q. How did you come to find out that there
7 was paperwork in the blue pod in June of 2007?

8 A. I heard Kyle Dwyer talking about it a few
9 times, talking about there was -- he felt bad about
10 it, but it was either him or them, and it wasn't
11 going to be him.

12 Q. And so when did Kyle Dwyer arrive? Was it
13 before or after Ben Clark came to Southern?

14 A. It was after Ben Clark.

15 Q. I'm going to show you Government's Exhibit
16 249 again. Do you remember what cell Kyle Dwyer
17 moved into?

18 A. I believe it was in the cell directly on
19 top of the steps.

20 Q. Is that the cell at the top left-hand
21 corner?

22 A. Yes, sir.

23 Q. Is that the cell that was right above
24 yours?

25 A. Yes, sir.

1 Q. At one point when you were in Mr. Dwyer's
2 cell, were you in there with Ben Clark, and did you
3 see paperwork?

4 A. There was a point where I remember Ben
5 Clark handing the paperwork back to Kyle. And he
6 told Kyle that everybody that needed to see the
7 paperwork had seen it. And Kyle took it in his
8 room, and I don't know what he did with it after
9 that.

10 THE COURT: Mr. Beck, would this be a good
11 place to end the evening?

12 MR. BECK: It would be a perfect place to
13 end, Your Honor.

14 THE COURT: All right. I know that many
15 of you will be traveling. I sit as a board member
16 on the Board of Directors for the Federal Judges
17 Association, so I'm going to spend the night and get
18 up at 2:00 a.m. and drive to El Paso and fly to
19 Washington, D.C. So you'd better hope the judge is
20 back on Saturday night.

21 I won't praise you and thank you like I do
22 every Friday night, but I ditto those, and in the
23 words of the week, "I love you, bro." Have a good
24 weekend.

25 All rise.

1 (The jury left the courtroom.)

2 THE COURT: All right. I appreciate your
3 hard work. Y'all have a good weekend. See you on
4 Monday morning.

5

6 May 7, 2018

7 THE COURT: All right. It looks like
8 we've got everybody, all the defendants in the room,
9 and attorneys for everybody. So we'll go on the
10 record.

11 Good morning, everyone. I appreciate
12 everybody being back and ready to go.

13 I did get a couple of motions overnight, I
14 guess, that were filed yesterday. One is on Ruben
15 Hernandez, so I had Ms. Bevel step over to Mr. Beck
16 and ask him, is this areas that the Government is
17 going to get into. And the answer is yes, Mr. Beck?

18 MR. BECK: Yes, Your Honor.

19 THE COURT: So I do need to look at this
20 and make a ruling on it. And Tim Martinez you don't
21 know yet, but you'll let me know as soon as you know
22 on that one?

23 MR. BECK: Yes.

24 MR. BURKE: Your Honor, may I inquire?
25 There was a run-on sentence, I believe, that

1 Ms. Harbour-Valdez and I mentioned in the Ruben
2 Hernandez one. Is it the Government's intention to
3 get into all of that? There is sort of a merger of
4 two different concepts in that sentence, if I
5 remember correctly.

6 MR. BECK: I think it's a statement from
7 Edward Troup about having more bodies and what he
8 would have done in May. So there are two things
9 there. We do intend to get into both.

10 MR. BURKE: And I have to say, that's
11 outrageous. There is no evidence of another body.
12 There has never been an investigation of another
13 body. There is no -- nothing about it. And the
14 informants sit there together and they come up with
15 this stuff, and then we can't defend against it.

16 THE COURT: I'm looking at your motion.
17 Where is the sentence you're talking about,
18 Mr. Burke?

19 MR. BURKE: I think it was -- we put it in
20 the beginning of the motion where Ruben Hernandez
21 allegedly heard -- I think he heard Edward Troup was
22 talking to Ben Clark and there was a discussion
23 about another body. And then he rolls into another
24 body at the Main.

25 THE COURT: Okay. So that's not one of

1 the bodies that we have in this case? That's
2 something else?

3 MR. BURKE: No, it's just something the
4 informants dreamed up as they're out there doing
5 drugs together.

6 THE COURT: Okay. Well, let me take a
7 look at your motion. I'll try to be ready. When do
8 you think this will come up? It may be coming up
9 pretty quick.

10 MR. BECK: Yeah, pretty quickly. I think
11 that ultimately it depends on, if we're getting the
12 video in through Ruben Hernandez, then that will
13 give us some time. If the video is not coming in
14 through Ruben but through Javier Alonso, we'll
15 probably get to it in the next 15, 20 minutes.

16 THE COURT: Is there an issue about the
17 video coming in?

18 MR. BURKE: There is, Your Honor. And let
19 me talk to the Court about that. You'll recall that
20 I raced up to the bench on Friday because we had had
21 a note slipped to us, Ms. Harbour-Valdez and I, that
22 Ruben Hernandez would be the foundation witness for
23 the video. And I want to describe the history of
24 the video.

25 First of all, the video was never listed

1 as an exhibit until the start of trial. Document
2 1979, which was the Government's exhibit list filed
3 on March 26, 2018, had crime scene videos for
4 Rolando Garza and Frank Castillo, but no mention of
5 a video for Fred Sanchez.

6 Then on the day the trial started, April
7 9, document 2088 the Government listed 647 and 648,
8 which are described as video of assault of victim
9 Sanchez. So we, Ms. Harbour-Valdez and I, scrambled
10 to find out what that video was, because it was not
11 listed as an exhibit until trial had started. And
12 we did finally, after a back-and-forth -- we got the
13 video, I think it was Thursday, the 12th of April,
14 and it was a grainy video from one of the three
15 cameras. The Court will recall from the Molina
16 homicide how there are three cameras, I believe near
17 the bubble. I believe that the positioning of the
18 cameras had changed from 2007 to 2014. So the ones
19 that you remember would have been in a slightly
20 different position. But there are three cameras.

21 The camera that was being used for the
22 exhibit was grainy and very difficult to see. And
23 our reaction as defense lawyers, Ms. Harbour-Valdez
24 and I, was, okay, it's late. We were thinking of
25 filing a motion to strike that exhibit; and we did

1 have it in discovery, so it wasn't a total surprise.
2 It's just that, you know, you let us know after
3 trial starts that you're going to use it after not
4 letting us know before. We didn't file a motion to
5 strike, because we felt we could get ready.

6 Then on Friday afternoon I come up to the
7 bench and say, "Well, what are you going to do?
8 What are you using?" And if my memory is that --

9 THE COURT: When you say, "What are you
10 using" --

11 MR. BURKE: The video that you're going to
12 try to get in through Ruben Hernandez. Because if
13 it's the grainy one that we had been put on notice
14 about, okay, all right, we'll do that. We've
15 received no reports about Ruben Hernandez reviewing
16 the video. I have no reports on that. And so we
17 said, "Well, send us what you're going to use, and
18 we'll make our decision about what to do about that
19 over the weekend."

20 And I believe that Ms. Armijo said, "We'll
21 send it to you, the video that's actually going to
22 be shown to Ruben Hernandez."

23 And then Friday, after court, they give us
24 four videos and say, "It will come from this."

25 We say, "No, no, no, no. We want the

1 exhibit. Give us the exhibit that you're going
2 to -- and then we can defend against that and
3 prepare for that."

4 We don't -- we just got it at 8-whatever,
5 8:00. We haven't seen it because we don't have a
6 laptop to look at it.

7 So the state of the evidence is: We don't
8 know what they're going to show him; we don't know
9 how he's a foundation witness. What's he going to
10 say about where the videos have been? We don't know
11 exactly which cameras it comes from. The cameras
12 are numbered channels 3, 4, and 5. We don't know
13 that -- it's supposedly a compilation.

14 I know it's 8:30, and the jury is here,
15 but we're not ready to defend against this. So --

16 THE COURT: Well, before you try to put
17 the video in, approach, Mr. Beck, and I'll hear
18 everybody out on that.

19 MR. BURKE: And so the Court knows, we
20 want a postponement before we -- so we have time to
21 cross-examine. So that's what we want.

22 THE COURT: Do you need this video through
23 Mr. Hernandez?

24 MR. BECK: No. I think both Ruben
25 Hernandez and Javier Alonso can testify that it

1 fairly and accurately depicts what was --

2 THE COURT: So you can get it in through
3 Javier?

4 MR. BECK: But I think he's coming up this
5 afternoon.

6 THE COURT: Do the defendants now know
7 which of the videos you're going to show?

8 MR. BECK: Yes.

9 MR. BURKE: No, we haven't had a chance to
10 look at it yet.

11 THE COURT: But you know which one it is
12 now?

13 MR. BURKE: Well, we know there is three
14 cameras. One was lousy; I think one didn't work at
15 all. I don't know. But one was good. We do not
16 know what they're using.

17 THE COURT: Well, be real clear, Mr. Beck,
18 telling which one of the exhibits you're going to
19 use.

20 MR. BECK: Sure. There's two exhibits.
21 The two exhibits, 647 and 648. 647 is all three
22 camera angles together, three videos side by side.
23 648 is channel 5, the grainy video that actually
24 stays on for the beginning of the assault.

25 THE COURT: Which one are you going to

1 use?

2 MR. BECK: We're going to enter both of
3 them into evidence. And I think we'll play both of
4 them. Because, frankly, the most damning portion
5 against Mr. Troup is video 5, the grainy video, 648.
6 So we're going to play both of them.

7 THE COURT: Would it be possible, since it
8 sounds like Mr. Burke is prepared and has been
9 prepared for 648, the grainy one, that you only use
10 the grainy one as to Troup, and then you deal with
11 647 through Mr. Alonso?

12 MR. BECK: You mean this morning in 648?

13 THE COURT: Well, it sounds like Mr. Burke
14 is saying that Troup has had 648; they hadn't moved
15 to strike it. And if that's the one that's most
16 useful against Mr. Troup, just use it against
17 Mr. Troup and not use 647; let that come in through
18 Mr. Alonso.

19 MR. BECK: That's fine. We can do that.

20 THE COURT: Could you work with that,
21 Mr. Burke?

22 MR. BURKE: Well, I don't know. We
23 haven't received a report about what he's looked at.
24 And it would be really good if we had time to look
25 at the exhibit that they want to show so that we can

1 make a decision.

2 THE COURT: I thought you had seen the
3 grainy one.

4 MR. BURKE: The grainy one we have.

5 THE COURT: We've got a commitment that's
6 all they'll use with Hernandez.

7 MR. BURKE: But it would still be good, as
8 defense lawyers, for us to see what it was that they
9 had intended to use, make a decision about: Maybe
10 that's the way to go, is to use the good one. Maybe
11 they're onto something.

12 And I want to add -- I don't think they're
13 being sneaky. There is no question they work very
14 hard. But we're not prepared.

15 THE COURT: Well, how long is it going to
16 take to look at a video?

17 MR. BURKE: I don't know. How long is it?

18 MR. BECK: I think the 647, the video, is
19 two hours. We plan to play snippets from 30 minutes
20 of the video.

21 MR. BURKE: And we don't know that. We're
22 entitled to know what the snippets are, what the
23 exhibit -- because that's the exhibit --

24 THE COURT: Well, 647 is not coming in
25 through Mr. Hernandez. And we'll deal with Mr.

1 Alonso when it comes up. I think you knew about the
2 grainy one, so --

3 MR. BURKE: We did.

4 THE COURT: -- we'll let that one come in
5 through Mr. Hernandez, and then we'll deal with the
6 other one. Maybe at that point you'll have a chance
7 to look at it. And I'll try to look at these
8 comments this morning.

9 MR. BURKE: All right. Thank you.

10 THE COURT: All rise.

11 (The jury entered the courtroom.)

12 THE COURT: Everyone be seated.

13 Good morning, ladies and gentlemen.

14 You're back, batteries and all. I understand that.
15 That's always my fear, that I'll be at the airport
16 in El Paso and leave the lights on for the weekend.
17 But I'm glad everybody is back. I'm back.

18 I can tell you they don't celebrate Cinco
19 de Mayo in Washington, D.C. So I'm going to
20 postpone my celebration with my clerks until after
21 the trial. We'll pick up that.

22 It was cloudy, a little bit rainy, but the
23 weather cooperated. And I'm glad to be here. Glad
24 you're back, as well.

25 All right. Mr. Beck, do y'all have

1 Mr. Hernandez moving toward the witness box?

2 MR. BECK: Yes, I think so, Your Honor.

3 Your Honor, while Mr. Hernandez works his
4 way up, the United States moves to admit
5 Government's Exhibits 967 and 968, which are
6 pictures of the control tower in housing unit 1A-B
7 pod.

8 THE COURT: Any objection from any other
9 defendant? All right. Government's Exhibits 967
10 and 968 will be admitted into evidence.

11 (Government Exhibits 967 and 968
12 admitted.)

13 THE COURT: All right. Mr. Hernandez, if
14 you'll come on in and stand next to the witness box.
15 Well, you've already been sworn in. I'll remind you
16 that you're still under oath.

17 RUBEN HERNANDEZ,
18 after having been previously duly sworn under
19 oath, was questioned, and continued testifying
20 as follows:

21 THE COURT: All right. Mr. Beck, if you
22 wish to continue your direct examination of Mr.
23 Hernandez, you may do so at this time.

24 MR. BECK: Thank you, Your Honor.

25 THE COURT: Mr. Beck.

1 CONTINUED DIRECT EXAMINATION

2 BY MR. BECK:

3 Q. Good morning, Mr. Hernandez.

4 A. Good morning.

5 Q. So I think where we left off Friday is we
6 were talking about when you were with Kyle Dwyer and
7 Ben Clark with the paperwork for Fred Sanchez. Do
8 you remember that?

9 A. Yes, sir.

10 Q. I want to take you to the day that Fred
11 Sanchez arrived in 1-A blue pod. Do you remember
12 that day?

13 A. Yes, sir.

14 Q. What happened when Fred Sanchez moved in
15 that day?

16 A. When he moved in, I didn't know that he
17 had moved in right away. The first thing I noticed
18 was Ben Clark was taken out.

19 Q. At some point, that day or the day after,
20 was there a meeting in the pod?

21 A. Yes. I don't remember exactly at what
22 point the meeting was, but it was -- I remember Fred
23 being in his room for orientation still, and --

24 Q. And what is orientation?

25 A. I guess they leave them in there for a few

1 days to see if they can make it on that line there.

2 Q. So who was at the meeting in the pod while
3 Fred was in orientation?

4 A. That would be everybody except for me:
5 Troup, Brian Rascon, Raymond Rascon, Jesse Trujillo,
6 and Alonso.

7 Q. So did you say that's everyone except for
8 you and Fred?

9 A. And Fred, yes, sir.

10 Q. Did you ask to go to the pod? Were you
11 invited to the pod? Excuse me, not to the pod. To
12 the meeting. What happened?

13 A. I noticed everybody in the room. I was by
14 one of the tables. I started to go over toward the
15 bars, and Jesse went out there and told me that it
16 didn't have anything to do with me; the less I know,
17 the better.

18 Q. After the meeting that you didn't go to,
19 what happened next? Let me ask you this first.
20 What did you think the meeting was about?

21 A. I thought it was about me.

22 Q. All right. And why did you think it was
23 about you?

24 MR. BLACKBURN: Your Honor, could you ask
25 the witness to please speak up? We can't hear him.

1 THE COURT: You can't go too close, or all
2 we get is kind of your breath; and you've got to
3 stay right about the same distance. There you go.

4 Let's try that, Mr. Blackburn, and tell me
5 if that doesn't work.

6 BY MR. BECK:

7 Q. Sorry. So one more time, what did you
8 think the meeting was about?

9 A. I thought it was about me.

10 Q. And why?

11 A. Because I told on somebody in the past,
12 and I was walking on eggshells for a long time,
13 wondering when they were going to find out what I
14 had did.

15 Q. What happened after this meeting?

16 A. That day I don't remember. Right offhand
17 I can't remember what happened right after the
18 meeting.

19 Q. Let me take you to Saturday, June 16,
20 2007. At some point did your pod go to the gym?

21 A. Yes.

22 Q. What happened in the gym?

23 A. We were in the basketball court and I
24 remember Jesse telling Brian to do it now; they
25 should do it now. And Brian said no. Jesse said

1 they were all in the room. I believe it was the
2 pool table room, and that they were in there; that
3 was perfect. And Brian said no.

4 Q. I'm going to show you Government's Exhibit
5 649. This is the overhead of Southern that we've
6 looked at before. I've circled in the bottom left
7 portion housing unit 1-A. Is that where you all
8 lived together at that time?

9 A. Yes, sir.

10 Q. When you say you went to the gym, is that
11 right across, there's a gym inside?

12 A. Yes, sir.

13 Q. And I'm going to show you what -- I'm
14 going to switch to the overhead here, and I'm going
15 to show you what's been admitted as Government's
16 Exhibit 281, but I'm going to mark this up with you
17 and we'll enter it into evidence differently if
18 we're able to.

19 Let me ask you first: Do you remember
20 where people on the bottom tier of housing unit 1-AB
21 pod were housed at the time of Freddie Sanchez's
22 murder?

23 A. Okay. One more time?

24 Q. Sure. Do you remember where people in the
25 pod were housed in the bottom tier?

1 A. Where they were housed?

2 Q. In which cells people were housed.

3 A. Yes, sir.

4 Q. Let's start down here in the blue pod.

5 Let's start right here closest to the wall. Who was
6 in that cell?

7 A. Downstairs, that's my cell, I believe.

8 Q. Who was housed to your left here?

9 A. Ben.

10 Q. At the time -- so I want to talk about
11 June 16, 2007.

12 A. There was nobody in there. I believe it
13 was empty.

14 Q. Because he had been moved out?

15 A. Yes, sir.

16 Q. And who was housed in the cell which would
17 have been next to Mr. Clark?

18 A. Jesse Trujillo.

19 Q. And who was housed next to Jesse Trujillo?

20 A. Alonso; Javier Alonso.

21 Q. All right. We'll switch over. Across
22 from the mechanical room and the shower, who was
23 housed in this cell?

24 A. That would be Fred Sanchez.

25 Q. And who was housed next to him?

1 A. I believe it was Raymond Rascon.

2 Q. Who was housed next to Raymond?

3 A. I think that was Brian, his brother.

4 Q. And who was housed next to Brian?

5 A. Troup.

6 Q. And I'm going to put the date here. That
7 was June 16, 2007; right?

8 A. Yes, sir.

9 MR. BECK: And Your Honor, I will offer
10 this as Government's Exhibit 281-A.

11 THE COURT: Any objection?

12 Not seeing or hearing any objection,
13 Government's Exhibit 281-A will be admitted in
14 evidence.

15 (Government Exhibit 281-A admitted.)

16 BY MR. BECK:

17 Q. And so earlier when you said that there
18 was the meeting with everyone except you and Mr.
19 Sanchez, that would have been Alonso, Trujillo,
20 Raymond Rascon. Brian Rascon, and Troup; is that
21 correct?

22 A. Yes, sir.

23 Q. After the gym and the conversation between
24 Jess Trujillo and Mr. Rascon, what happened next?

25 A. I remember going back to the pod. I

1 remember there had been a shakedown.

2 Q. When you say they did a shakedown, what is
3 a shakedown?

4 A. The COs search your room.

5 Q. And did that happen while you all were at
6 the gym?

7 A. Yes.

8 Q. Was anything taken of note?

9 A. Yes, sir.

10 Q. What?

11 A. I remember there was cups on the table.
12 When we came back, they weren't there anymore.

13 Q. What happened when you returned back to
14 the pod and saw there was a shakedown?

15 A. I don't remember right away, but I
16 remember making my way up there, upstairs. I would
17 go upstairs, park my crutches at the top of the
18 steps, and hop along. And I was talking with
19 Conrad.

20 Q. Okay. Was Conrad another inmate in
21 housing unit 1-AB pod?

22 A. Yes, sir.

23 Q. And when you were talking to him upstairs,
24 how were you talking to him?

25 A. Through the food port.

1 Q. Were you talking to him through the food
2 port because only one tier has tier time at a time?

3 A. Yes, sir. We would go out at certain
4 hours of the day for so many hours.

5 Q. And what happened while you were talking
6 to Conrad?

7 A. Conrad asked me what was going to happen.
8 And I told him that Brian had said that to just
9 relax; that they found the cups in the shakedown.
10 And then we talked about something else. I can't
11 remember. But then I remember he gave me -- I was
12 trying to get a tape from him, Ozzmosis, Ozzy
13 Osbourne. I had been trying to buy it from him for
14 a couple of days. And he just gave it to me. He
15 says, "Here, bro." I remember that was it.

16 Q. You talked to Conrad about Brian and the
17 cups. Why is that? What were the cups?

18 A. The cups were supposedly supposed to be
19 for the camera.

20 Q. So the cups were to be used to cover the
21 camera? Is that what you said?

22 A. Yes.

23 Q. And if you could speak up just a little
24 bit and back up a little bit from the microphone, I
25 know we're having trouble, but I want to make sure

1 everyone can hear you.

2 What happened after you got the Ozzmosis
3 tape from Conrad?

4 A. I went to my room and put it on. I had my
5 radio connected to my TV. I had it rigged up where
6 I could play the radio and you could hear it on the
7 TV. So I went in and put the tape in and pushed
8 "play."

9 Q. What happened after you started playing
10 the Ozzmosis tape? What happened next?

11 A. I noticed Jesse calling me out of the
12 room. I went out there and he told me to cover the
13 bubble. He was holding paper towels.

14 Q. Okay. So when Jesse called you out of the
15 room and told you to cover the bubble, I'm going to
16 show you what's now been admitted as Government's
17 Exhibit 967. Do you recognize what's in
18 Government's 967 here?

19 A. Yes.

20 Q. Is that the inside of the blue pod?

21 A. Yes, sir.

22 Q. When you say "cover the cameras on the
23 bubble," where is the bubble?

24 A. The bubble is on the far left side around
25 the corner of that wall there. You can't see it.

1 It's on top of the door.

2 Q. Is that sort of the control tower I've
3 circled on the left? Is that what you refer to as
4 the bubble?

5 A. Yes, sir.

6 Q. Let me show you Government's Exhibit 968.
7 Is that a better view of what you considered the
8 bubble?

9 A. There's that one and there's one right on
10 top of the door, I believe.

11 Q. Okay.

12 A. Of the exit door.

13 Q. At the time, in June 2007, were there
14 cameras attached to the bubble here?

15 A. The cameras. There is a camera. There
16 was camera on that far side, again, right under the
17 window, and then right there in that left corner.

18 Q. Okay. If you can touch your screen -- can
19 you touch your screen with your handcuffs on? You
20 don't have handcuffs on. Sorry. Mark where the
21 cameras were for the jury on 968.

22 A. (Witness complies.)

23 Q. So you marked on the control tower one
24 dot, then another dot where it looks like there is
25 some paint removed there?

1 A. Yes, sir.

2 Q. And there were two cameras on this side.

3 Is that all the cameras on the control center in
4 2007, or was there another one?

5 A. I want to say there was two cameras, but I
6 just remember the one on top of the door
7 specifically.

8 Q. Okay. When you say there was one on top
9 of the door, are you talking about the door in this
10 picture, or a door that we don't see?

11 A. There is a door we don't see on this side
12 here. It's the exit door.

13 Q. So where the light is coming in on the
14 bottom of Government's Exhibit 968, is that the
15 entry and exit door to the pod?

16 A. Yes, sir.

17 Q. And what's behind the door that we see on
18 Government's Exhibit 968?

19 A. That's a caustics closet.

20 Q. When Jesse Trujillo called you out of your
21 cell and told you to cover the cameras, what
22 happened next?

23 A. I covered them. I covered the one by the
24 door. Then I went to the side and I tried to cover
25 the one on the side, but I couldn't reach it. Jesse

1 got the broom and covered the one on the side. I
2 went back to the door. I stayed at the door. Jesse
3 told me, "If somebody comes in, use your crutch and
4 block the door."

5 I remember standing there for a little
6 bit; the song being over. I remember hearing
7 somebody -- somebody sounded like they got stabbed
8 in the throat, like they were choking on their own
9 blood. I remember hearing Troup's voice: He
10 thought we wouldn't find out.

11 Q. What happened after you heard Troup's
12 voice, Mr. Hernandez?

13 A. It went quiet. Jesse, after a while, told
14 me (speaks Spanish), "Uncover the cameras." And I
15 uncovered them. I remember I uncovered the first
16 one on the door. I went to the side, and I was
17 having trouble uncovering the side, but I got it.
18 And I remember while I was having trouble, Troup was
19 already upstairs, walking back and forth, and I
20 remember he told me, "I ain't fucking with that
21 shit," referring to the camera, because I was having
22 trouble uncovering it. And I had asked Jesse to
23 help me. And Jesse didn't help me uncover it.

24 Q. After you uncovered the cameras, did you
25 ever look into Mr. Sanchez' cell?

1 A. I went back to my room. I started to go
2 in my room. On the way down the stairs, I looked to
3 the side, and I seen Alonso tucking in Fred, trying
4 to tuck the blanket under him, and prop his arm up,
5 the way a parent does when your kid goes to sleep,
6 tucking in their child. That's what it looked like
7 he was doing. Then I went in my room.

8 Q. After you saw Mr. Sanchez, did Mr. Troup
9 later say something to you?

10 A. He did, but it wasn't right away.

11 Q. What did he say to you?

12 A. He told me -- this wasn't till -- when he
13 told me that, he told me that I was "next,
14 motherfucker," but it wasn't right away.

15 Q. All right. At some point later, did one
16 of the Rascon brothers bring something to your cell?

17 A. Brian brought -- we went to lockdown.
18 Brian brought a towel to my cell.

19 Q. What did you do with that towel?

20 A. I put the towel in my room on my bed.

21 Q. When you went into lockdown that night,
22 had they found Mr. Sanchez' body?

23 A. No, sir.

24 Q. What did you do that night?

25 A. I cried all night, prayed all night.

1 Q. What happened the next day?

2 A. Well, that night Brian came and told me
3 that he wanted me to go and move the body into a
4 fetal position and wipe down the scene. He said
5 that the reason for moving the body was because it
6 would take them -- they would think he was asleep if
7 they seen the body moved, and that the longer that
8 it took them to find him, it would be harder for
9 them to solve the crime.

10 Q. Mr. Hernandez, I'm going to show you --
11 well, let me ask you this. On Friday here at the
12 courthouse did you have the opportunity to review a
13 video tape?

14 A. Yes, sir.

15 Q. And did that video tape fairly and
16 accurately represent the events that occurred in the
17 blue pod on June 16, 2007?

18 A. Yes, sir.

19 MR. BECK: Your Honor, the United States
20 moves at this time to enter into evidence and play
21 for the jury Government's Exhibit 648.

22 THE COURT: Anything else on that,
23 Mr. Burke?

24 MR. BURKE: Yes. May we approach?

25 THE COURT: You may.

1 (The following proceedings were held at
2 the bench.)

3 MR. BURKE: I still don't know what he's
4 going to play, because 648 is long, and so he's not
5 going to play the whole thing.

6 THE COURT: How long is what you're going
7 to play?

8 MR. BECK: I think 648 is shorter. I
9 think it starts at 1822, and we're going to play
10 that through about 1834, 35, I think, is when the
11 camera gets covered.

12 MR. BURKE: But the tape itself is hours
13 long. It's not just 15 minutes or 20 minutes. It's
14 a long --

15 MS. HARBOUR-VALDEZ: 12-hour blocks.

16 MR. BECK: I think Exhibit 648 is shorter.
17 I think it's about 1822 until about 1850, if memory
18 serves me correct. So that would be about -- I'm
19 not good at math -- a 38-minute video.

20 MR. BURKE: Just so the record is clear,
21 647 and 648 are 12-hour tapes. So if you want to
22 say 648-A or 648-B, you know, then that would make a
23 clearer record. The exhibits we received are
24 12-hour chunks; right?

25 THE COURT: What I understand is -- and

1 correct me if I'm wrong -- 648 is an excerpt of the
2 grainy tape?

3 MR. BECK: Right.

4 MR. BURKE: Now, it is -- I'm sorry for
5 interrupting.

6 THE COURT: What you received all along is
7 the full-length grainy tape?

8 MR. BURKE: Yes. So we never got the
9 exhibit. We got the long version.

10 THE COURT: Do you have any problem with
11 this excerpt coming in, given that you've had the
12 full grainy one all along?

13 MR. BURKE: I'd like my co-counsel to
14 weigh in.

15 MS. HARBOUR-VALDEZ: I just don't know how
16 he lays the foundation: Where this video has been
17 for the past 11 years; in whose custody; has it been
18 in -- I get that he may say it accurately depicts
19 that day, but I mean, I think there's some more
20 foundation that needs to be made.

21 THE COURT: Can we conditionally admit it?
22 Do you have some witness that can do the chain of
23 custody on this tape?

24 MR. BECK: That's unnecessary. I mean,
25 that's not a requirement for admission of a video

1 tape. There is a Tenth Circuit case I think from
2 1999, United States against Mills. I can get the
3 citation quickly. It's in my notes right there. It
4 says that all that's required for a video tape, like
5 a photograph, is that a witness can say it fairly
6 and accurately represents what's on the tape. Chain
7 of custody isn't required for a video tape, just
8 like it's not for a photograph.

9 THE COURT: I think that's probably true.
10 If he can admit that this is a fair and accurate
11 representation, I think it's fine. We're not going
12 to bring in the other videos through Mr. Hernandez,
13 so you'll --

14 MR. BURKE: Not so fast. We are going to
15 bring in some other videos as impeachment.

16 THE COURT: That's fine.

17 MR. BURKE: Because we don't know what
18 this is going to be. But once we see it, we may --

19 THE COURT: I think I pretty much know
20 what --

21 MR. BURKE: Exactly.

22 THE COURT: It's an excerpt of a longer
23 tape that you've seen?

24 MR. BURKE: Correct.

25 THE COURT: Let's go ahead and admit 648.

1 We'll play the others. If not, I'll hear your
2 argument on 647.

3 While I've got y'all here -- and I'll
4 break it down with Hernandez -- it says the
5 statement that he made that "Troup was having coffee
6 and bragged about taking someone out." I think
7 that's probably enough to allow a reasonable juror
8 to conclude that it was, you know, the Sanchez or
9 the Castillo murders. So I'd be inclined to allow
10 that.

11 The second statement I have a little bit
12 more of a problem with. You may have some more
13 evidence. But looking at that Martinez memo -- and
14 I'm not sure you adopt that -- I think this might
15 fall into a 404 category. You're going to have to
16 articulate noncharacter purpose for the evidence
17 regarding that he committed one at Old Main, because
18 we've had these down in Southern. And I think that
19 first statement is probably okay.

20 Then I think you might have a notice
21 problem. I'm not sure this 302 is going to be
22 enough notice. So unless you can really tie these
23 in some way, and looking at the Martinez motion that
24 Troup filed, it seems to me you may have another
25 murder. But we don't know anything about it.

1 MR. BECK: Yes.

2 THE COURT: I'd be inclined to keep the
3 second statement out here. So you probably need to
4 lead him. I'll let you get the first one in, not
5 the second. And then on Martinez, unless you got
6 some evidence that links it up to SNM and
7 racketeering, I'd be inclined to keep that out.

8 MR. BECK: Sure.

9 MR. BURKE: I'll try to remember not to
10 object to your leading questions.

11 THE COURT: If you do, I'll let him do it
12 non leading. No telling what happens; right?

13 (The following proceedings were held in
14 open court.)

15 THE COURT: All right. Mr. Beck, I'll
16 admit 648 into evidence.

17 (Government Exhibit 648 admitted.)

18 BY MR. BECK:

19 Q. So 648 is about to come up on your screen
20 in front of you there.

21 (Tape played.)

22 Q. Please press pause. Mr. Hernandez, what
23 are we looking at here in the video that's
24 Government's Exhibit 648? Where is this showing us?
25 I'm not asking you to pick out everything in there;

1 just where is this video showing?

2 A. This is in the pod, in blue pod on the
3 side -- it looks to me on the side camera by the
4 caustics door.

5 Q. And the events that happened after the gym
6 on June 16, 2007 -- did they happen around --
7 sometime between 6:00 and 7:00 at night?

8 A. Yes, sir.

9 Q. Please press play.

10 (Tape played.)

11 Q. Please press pause. All right. So we've
12 seen some people walking around in the background of
13 this. Let me ask -- I'm going to draw a line here.
14 You can't see it very well under where we see 1A-B
15 pod. It looks like some light coming in there.
16 What's underneath that?

17 A. That right there is an exit door, and then
18 right next to it on the left side is --

19 THE COURT: It's all right for you to
20 really study the screen. But when you talk, turn
21 back to the microphone. Thank you, Mr. Hernandez.

22 A. On the left side, that's the shower, I
23 believe, and on the right side there is an exit door
24 there, and then further to the right is Fred
25 Sanchez's room, and then on the room to the left

1 side of the shower is Javier Alonso's room.

2 THE COURT: Are you needing to object,
3 Mr. Burke, or just standing?

4 MR. BURKE: No, I'm just watching. Sorry,
5 Judge.

6 THE COURT: That's fine. I just didn't
7 want to ignore you.

8 BY MR. BECK:

9 Q. Please press play.

10 (Tape played.)

11 Q. Please press pause. So I'm showing the
12 clock on the top left says 18:24:14:437, and we just
13 saw something happen in front of the camera. What
14 happened?

15 A. That's me trying to cover it.

16 Q. And what's pictured down here in the
17 bottom right? What were you trying to cover it
18 with?

19 A. Paper towels.

20 Q. Please press play.

21 (Tape played.)

22 Q. Please press pause. There are two
23 gentlemen in the front of this screen at
24 18:24:46:234. Who are those two gentlemen?

25 A. The one on the left side is me, and the

1 one on the right is Jesse.

2 Q. Please press play.

3 (Tape played.)

4 Q. And do you know who is walking around on
5 the back of the bottom tier, who those people are?

6 A. When I went to cover the camera, the first
7 one I seen, Raymond Rascon on the left side of the
8 bottom tier going back and forth.

9 Q. Please press pause. So here at
10 18:25:11:031, we saw someone walk out here on the
11 left. Do you know who that is?

12 A. That looks to be like Raymond Rascon.

13 Q. All right. Please press play.

14 (Tape played.)

15 Q. Please press pause. So there at
16 18:25:55:000, did we just see you try to cover the
17 camera again?

18 A. I believe so, yes, sir.

19 Q. Please press play.

20 (Tape played.)

21 Q. Please press pause. So now at
22 18:26:15:625, what happened?

23 A. I went to the door.

24 Q. Let me ask, did you now cover the camera
25 completely?

1 A. No. That was Jesse. I had went around
2 the corner already, and then Jesse hid the camera.

3 Q. So at this point when Jesse covers the
4 camera, what are you doing?

5 A. I'm going to the door and I put my face in
6 the door.

7 Q. I'm going back to 18:24:34:234. Please
8 press play.

9 (Tape played.)

10 Q. Please press pause. Mr. Hernandez, did
11 you just see someone come from the right side of the
12 screen to the left side of the screen with what
13 looked like a red folder in their hand?

14 A. No, sir. I didn't pay attention to it.

15 Q. Back it up just a couple seconds, please.

16 (Tape played.)

17 Q. Please press pause. Do you know who --
18 right there, do you know who that person is?

19 A. That looks like Troup.

20 Q. And then if we can go forward to about
21 18:38. That's just a guess. Scan forward a little
22 more, please.

23 (Tape played.)

24 Q. So we're at 18:39:30. I think you said
25 before, but at some point did you and Jesse remove

1 all of the paper towels off of the cameras?

2 A. Yes, sir.

3 (Tape played.)

4 Q. Is that what we just saw happen at
5 18:39:47?

6 A. Yes, sir.

7 Q. Mr. Hernandez, did you and I -- well, let
8 me ask, after -- the day after the Fred Sanchez
9 murder on the 16th, did you meet with New Mexico
10 State Police officers?

11 A. Yes, sir.

12 Q. After you met with the state police, did
13 you talk to them that day?

14 A. I did, yes, sir.

15 Q. And after you met with state police
16 officers, were you quickly moved from the Southern
17 New Mexico Correctional Facility?

18 A. Yes, sir.

19 Q. Is that when you renounced and left the
20 SNM Gang?

21 A. Yes, sir.

22 Q. Do you remember that you and I met
23 together at the end of last month to prepare for
24 your testimony here today?

25 A. Yes, sir.

1 Q. And is that the time when I asked you
2 about both the Fred Sanchez murder and whether you
3 knew any of the defendants in this trial?

4 A. Yes, sir.

5 Q. Did we talk about statements that you have
6 had over the years from people in this trial?

7 A. Which?

8 Q. If you remember.

9 A. Statements concerning this?

10 Q. Right.

11 A. If I had wrote any?

12 Q. If you had ever talked to any of the
13 defendants in this trial over the years about things
14 they've done.

15 A. Oh, yes, sir. But I never have, no, sir.

16 Q. And at some point were you talking with
17 Ben Clark in front of Huero Troup's room on a stoop?

18 A. Ben Clark?

19 Q. Did you remember a conversation you had
20 with Ben?

21 A. Yeah, I remember them talking about --
22 they were talking about in the past, something about
23 Mama Bear and Rabbs.

24 Q. Hold on one second. Let me ask you a
25 couple of questions about that. Let me ask you, was

1 it common for you and other SNM members to talk
2 about things they had done in the past?

3 A. They would talk about things that they
4 did. But they were talking in ways that they knew,
5 you know -- like they would say certain things and
6 they would remember what that certain thing meant
7 or --

8 Q. Before you get into any of those certain
9 things, did -- during this conversation with Ben
10 Clark and Edward Troup, did Troup brag about taking
11 someone out?

12 A. He said that he had done it before.

13 MR. BECK: May I have a moment, Your
14 Honor?

15 THE COURT: You may.

16 MR. BECK: Nothing further, Your Honor.

17 THE COURT: Thank you, Mr. Beck.

18 Mr. Burke, do you have cross-examination
19 of Mr. Hernandez?

20 MR. BURKE: I do, Your Honor. Thanks.

21 THE COURT: Mr. Burke.

22 CROSS-EXAMINATION

23 BY MR. BURKE:

24 Q. Just a quick question on that last thing.
25 When was this conversation that you supposedly heard

1 between Edward and Benjamin Clark?

2 A. What?

3 Q. When was the conversation you allegedly
4 heard involving Edward Troup and Benjamin Clark?

5 A. That was maybe a month before this.

6 Q. Okay. Because, you know, you've been
7 through your statements, you know; you never
8 mentioned that until a month ago; right?

9 A. Yeah.

10 Q. Yeah. Let me ask you a couple of
11 questions about -- you mentioned orientation. How
12 long does orientation usually last?

13 A. Anywhere from one to three days.

14 Q. Okay. When did Mr. Sanchez arrive in your
15 pod?

16 A. I don't remember what day.

17 Q. Could it be the 14th? Does that sound
18 right?

19 A. I'm guessing.

20 Q. Yeah, and when did Ben Clark leave?

21 A. It was the same day that Freddie showed
22 up.

23 Q. Okay. And so were they there at the same
24 time?

25 A. I don't know if they were or not. I

1 didn't even know Freddie was in the pod yet. I just
2 seen Ben first.

3 Q. Was there word in the pod that Freddie was
4 coming?

5 A. I hadn't heard. No one told me anything.

6 Q. No one knew he was coming; he just showed
7 up on the 14th?

8 A. I don't know if they knew or not.

9 Q. You had the paperwork in your hands at one
10 time through the food port of Kyle Dwyer's cell;
11 right?

12 A. No, sir.

13 Q. So if to someone said that, they'd just be
14 mistaken?

15 A. Well, if they did, I don't remember having
16 the paperwork in my hands. I remember when the
17 paperwork was handed back to Kyle. That's all I
18 remember.

19 Q. And did you know the paperwork related to
20 Fred Sanchez?

21 A. I didn't, no, sir.

22 Q. Did you think it was related to you?

23 A. I was hoping it wasn't.

24 Q. Okay. And then so when there was this
25 time when the guys went to rec and Jesse says to

1 Brian -- Jesse Trujillo says to Brian, "Let's do it
2 now," did you think they were going to hit you then?

3 A. No, sir, I didn't.

4 Q. By that time, you knew it was somebody,
5 not you; it was somebody else; right?

6 A. No, I didn't know what they were talking
7 about at the time.

8 Q. So "Do it now," it was just a mystery to
9 you?

10 A. Brian said, "No, not now." That's all.

11 Q. And that was a mystery to you. You didn't
12 know who would be involved; right?

13 A. I had a feeling something was going to
14 happen. I just didn't know what.

15 Q. Did you have a feeling it involved Fred
16 Sanchez?

17 A. I didn't know.

18 Q. You didn't know?

19 A. At that point.

20 Q. That was the same day that it happened.
21 You didn't know?

22 A. I didn't know who he was. I met him as
23 soon as he got there.

24 Q. You met him when he got there. Were you
25 both from -- did you have some acquaintance in the

1 past?

2 A. No, I never met him before.

3 Q. You know that you said that you knew him
4 from the past.

5 A. No.

6 Q. Is that a mistake?

7 A. Yeah, that is a mistake. I didn't know
8 him from the past.

9 Q. Now, the cups on the table -- they were to
10 block cameras; right?

11 A. Yes, sir.

12 Q. And the COs saw the cups, and that must
13 have been a big alarm for everybody, because you
14 would only be blocking the cameras if something was
15 going to happen; right?

16 MR. BECK: Objection, foundation and
17 speculation.

18 THE COURT: Well, I think he knows
19 something about this. Overruled.

20 BY MR. BURKE:

21 Q. Do you know why there were cups, what they
22 were going to be used for?

23 A. I didn't know what they were going to be
24 used for.

25 Q. You didn't know that the cups were

1 supposedly going to be used?

2 A. No, they told me John made the cups and
3 was going to do something with them. I didn't know
4 what.

5 Q. When you say "John," do you mean John John
6 Montano?

7 A. Lucero.

8 Q. He lived in the upper tier? Who were some
9 of the other people on the upper tier?

10 A. I remember the guy from California, Tiny;
11 Conrad, Kyle, Lawrence.

12 Q. Lawrence Torres, the old man?

13 A. Yes, sir.

14 Q. Gumby? He was up there?

15 A. Gumby, yes, sir. That's right.

16 Q. I want to show you a diagram. You did a
17 diagram today. I want to show you a diagram you did
18 a month ago.

19 MR. BURKE: May I approach the witness?

20 THE COURT: You may.

21 BY MR. BURKE:

22 Q. A month ago you did a diagram, and I'm
23 going to show it to you. That's your handwriting,
24 is it not?

25 A. I think so.

1 Q. You have on this side Fred Coquito.

2 That's actually Brian Rascon; right?

3 A. Yes.

4 Q. Not Raymond, like you said today; right?

5 A. It's Raymond.

6 Q. So you had that wrong. And then you have
7 Troup in the third cell; right?

8 A. Yes, sir.

9 Q. But that was actually Cheeky's cell;
10 right?

11 A. I believe so, yes, sir.

12 Q. And then Troup was on the end; right?

13 A. I believe so, yes.

14 Q. So two out of four you got wrong --

15 A. Yes, sir.

16 Q. -- a month ago. And how was it that you
17 were able to now have this clarity here today?

18 A. Looking back through the camera -- I mean
19 the video that I seen.

20 Q. Well, the doors don't have the names on
21 them, do they?

22 A. When I was looking at everybody walk
23 around, I remembered.

24 Q. So seeing them walk around helped you
25 remember?

1 A. Yes, sir.

2 Q. Okay. Thank you. Mr. Hernandez, you're
3 45; right?

4 A. 45 in about a week and a half or two.

5 Q. All right. You pled guilty in this case;
6 correct?

7 A. Yes, sir.

8 Q. And as part of the plea of guilty, you had
9 a presentence investigation report; correct?

10 A. Yes, sir.

11 Q. And you've reviewed that?

12 A. Parts of it, yes, sir.

13 Q. And I am going to go through some of the
14 things that were stated there to see if it refreshes
15 your memory about the number of felonies that you
16 have. And I'm going to go through them
17 chronologically. Okay?

18 A. Yes, sir.

19 Q. In '92, distribution of a controlled
20 substance when you were 19. Do you remember that?

21 A. Yes, sir.

22 Q. In '95, when you were 21, battery and
23 false imprisonment. Do you remember that one?

24 A. Yes, sir.

25 Q. '98, attempted harboring or aiding a

1 felon. Do you remember that one?

2 A. Yes, sir.

3 Q. 2001, when you were 27, larceny at the age
4 of 27. Do you remember that?

5 A. Yes.

6 Q. And then at the age of 30, 2003,
7 aggravated burglary, conspiracy to commit assault
8 with intent to commit a violent felony. Do you
9 remember that one?

10 A. Yes.

11 Q. Let me just move ahead and then we might
12 come back to that one. Delivery of a counterfeit
13 substance within a drug-free school zone at the age
14 of 30. You were convicted of that?

15 A. Yes, sir.

16 Q. Then you were convicted of possession of a
17 firearm or destructive device by a felon in 2003?

18 A. Yes, sir.

19 Q. Burglary in 2003; correct?

20 A. Yes, sir.

21 Q. And then we jump over to 2013, possession
22 of a firearm by a felon. That's when you were 40;
23 correct?

24 A. Yes, sir.

25 Q. And moving ahead, residential burglary was

1 your tenth. Escape or attempt to escape from jail,
2 that was your 11th; correct?

3 A. Yes, sir.

4 Q. And then breaking and entering for number
5 12; right?

6 A. Yes, sir.

7 Q. Then the pleading to this would be your
8 13th felony?

9 A. Yes, sir, I think.

10 Q. Unless the Probation Department missed
11 one; correct.

12 Now I want to talk to you a bit about some
13 other discussions that were in the presentence
14 report. And let me ask: You've had some
15 difficulties with your mental health, haven't you?

16 A. Yes, sir.

17 Q. And are you on medication today?

18 A. No, sir.

19 Q. But you actually have had mental health
20 hospitalizations; true?

21 A. MHTC in prison.

22 Q. You used psychotropic medications?

23 A. I have, yes, sir.

24 Q. You've tried to commit suicide?

25 A. I have.

1 Q. You've been diagnosed with PTSD, anxiety
2 and bipolar disorder; correct?

3 A. Yes, sir.

4 Q. All right. And what you are doing now is,
5 you understand that you will be going -- you're in
6 prison now. You will be going to prison again, and
7 you want to improve your situation; is that correct?

8 A. What do you mean, improve my situation?

9 Q. You want to be in the federal facility, do
10 you not, instead of the state?

11 A. I've never said that, no, sir.

12 Q. Are you in federal custody now?

13 A. Yes, sir.

14 Q. All right. Thank you, sir.

15 I want to talk a little bit about -- you
16 mentioned this -- the thing about being an
17 informant. That's when you went into Jose Lopez'
18 house with Lorenzo Chavez; isn't that correct?

19 A. Yes, sir.

20 Q. And you were going to be the muscle, but
21 Lorenzo Chavez actually shot and killed Jose Lopez?

22 A. I was outside in the car.

23 Q. The reports say you were right there,
24 standing right there being the muscle man?

25 A. No, I was in the car.

1 Q. Okay. But he was a Los Carnales; right?

2 A. He was a LCer, yes, sir.

3 Q. And you -- in order to get out of more
4 trouble, you were an informant against him; right?

5 A. I told on him, yes, sir.

6 Q. And you were concerned that that could
7 bring some trouble down on you when you got to
8 prison; is that true?

9 A. It was going to be trouble down on me,
10 yes.

11 Q. All right. And that's why you joined the
12 SNM?

13 A. That's one reason, yes, sir.

14 Q. All right. And then another incident I
15 did want to talk to you about, we have seen that
16 you're limping there. The reason you're limping is
17 that you shot yourself with a shotgun; right?

18 A. Yes, sir.

19 Q. And you had used that shotgun in
20 burglaries; isn't that true?

21 A. No, sir.

22 MR. BURKE: May I approach the witness?

23 THE COURT: You may.

24 BY MR. BURKE:

25 Q. This is a report from the police

1 department at that time. Okay? And you see -- I'm
2 just asking you if it refreshes your memory. It
3 says, "The shotgun was used to strike him on the
4 side of the head." This was in a burglary. Does
5 that refresh your memory?

6 A. Yes, sir. The burglary that happened was
7 the shotgun that was used in the burglary, but I
8 was -- I drove. I drove the vehicle. It was my
9 vehicle, and I drove.

10 Q. Okay. You were in the car, but you let
11 somebody use the shotgun that you eventually shot
12 yourself with?

13 A. No, it was their shotgun. I gave them a
14 ride, dropped them off. When they did what they
15 did, I picked them back up. And when it was all
16 over, I had the shotgun.

17 Q. And lo and behold, you shot yourself with
18 it?

19 A. Yes, I had it on the floorboard between --
20 my pickup, between the door and the driver's seat.
21 When I hit the curb, I had one in the chamber, and
22 it went off.

23 Q. Would you just take a quick look,
24 Mr. Hernandez, at your location history? It looks
25 like you have been in federal custody for the last

1 couple of years; correct?

2 A. Yes, sir.

3 Q. And who are you in custody with?

4 A. Which time?

5 Q. Now.

6 A. Now? Who am I in custody with?

7 Q. Yes, now.

8 A. Right now I'm in Otero. I'm in an
9 isolation cell.

10 Q. And who else is there that might have been
11 SNM members?

12 A. There is one more, Eugene Martinez, and
13 then another one.

14 MR. BECK: Your Honor, objection.

15 THE COURT: Why don't you approach on
16 these questions here?

17 (The following proceedings were held at
18 the bench.)

19 THE COURT: You're concerned about the
20 location?

21 MR. BURKE: Oh. The real reason I was --
22 he's with Timothy Martinez, and they've had a
23 chance --

24 THE COURT: And you already got that.

25 MR. BECK: Yeah. Avoid the location. I

1 get why you want to ask.

2 THE COURT: Do you need anything else?

3 MR. BECK: The bell has been rung. I
4 think if he wants to ask if he's housed with any
5 other SNM members, that's fine. I think there may
6 be others, and I think it's fair to get into that.
7 We were both not on our feet fast enough. I
8 understand why he's asking.

9 MR. BURKE: I'll ask about Clark.

10 THE COURT: You can ask maybe who else.
11 Well, I see.

12 MR. BECK: The bell has already been rung.

13 MR. BURKE: He did some drugs with Ben
14 Clark. I'll ask a leading question.

15 THE COURT: Maybe don't go back into
16 location.

17 MR. BURKE: That's right.

18 (The following proceedings were held in
19 open court.)

20 THE COURT: All right. Mr. Burke.

21 MR. BURKE: Thank you, Your Honor.

22 BY MR. BURKE:

23 Q. Without telling us where, Ben Clark is out
24 there; correct?

25 A. No, sir.

1 Q. Who were you doing drugs with out there?

2 A. That was in Sandoval County.

3 Q. No, no, you're not supposed to say where
4 you were. Who have been some of the people you've
5 done drugs with since you went into federal custody,
6 as we've established?

7 A. Ben Clark, Paul Rivera, Jerry Martinez.
8 Solomon -- I don't remember his last name.

9 Q. That's fine. Let me ask you, sir, when
10 Ben Clark came to the pod, he was established as the
11 keyholder; correct?

12 A. When he came to the pod, at first I didn't
13 know who he was. We had a talk about that. And he
14 told me who he was, and he said that him and Ern Dog
15 had exchanged messages, and that Ern Dog told him
16 that he'll step down; he could do whatever he
17 wanted. Ben informed me he told Ern Dog to go ahead
18 and do what he's doing. But when Ben Clark talked,
19 people listened.

20 Q. So he was the keyholder in the pod when he
21 got there?

22 A. In my pod, I would probably say yes.

23 Q. And before that, the keyholders were you
24 and Brian Rascon?

25 A. No, sir.

1 MR. BURKE: May I approach?

2 THE COURT: You may.

3 BY MR. BURKE:

4 Q. Have you ever stated that you were the
5 keyholder along with Brian Rascon?

6 A. No, sir.

7 Q. It says here -- why don't you read it.
8 Let me ask you this. You did not say that Kiko and
9 you were in charge of blue pod until Ben Clark
10 arrived?

11 A. No, sir. That would be impossible. I was
12 just a person, and for me just barely getting there,
13 there would be no way for me to be a keyholder.

14 Q. So the FBI wrote that down wrong then; is
15 that correct?

16 A. I don't know who wrote it wrong. But
17 there is no way for me to be a keyholder like that,
18 for me to just go in the pod and be a keyholder.

19 THE COURT: Mr. Blackburn?

20 MR. BLACKBURN: Number one, I couldn't
21 hear, Your Honor. But if Mr. Burke could give us
22 the Bates number.

23 MR. BURKE: 68482.

24 THE COURT: And here's what he said,

25 Mr. Blackburn: "I don't know who wrote it wrong,

1 but there is no way for me to be a keyholder like
2 that, for me to just go in the pod and be a
3 keyholder." Is that helpful?

4 MR. BLACKBURN: Yes, Your Honor.

5 THE COURT: Mr. Burke.

6 MR. BURKE: Thank you, Your Honor.

7 BY MR. BURKE:

8 Q. You know, Mr. Hernandez, when you were
9 told to cover the cameras, you knew what that was
10 for; correct?

11 A. Yes, sir.

12 Q. And you went along with that; right?

13 A. I covered the cameras, yes, sir.

14 Q. And then you were hurt, and so you decided
15 the next day to resign from the SNM, and you were
16 going to make a statement; is that correct?

17 A. Somebody got killed; yes, sir.

18 Q. And then I have that statement and I'm
19 going to ask you about that. Okay? That was a
20 statement to the warden, Robert Ulibarri, and the
21 STIU administrator, Anthony Romero. You remember
22 that?

23 A. I remember writing it, yes, sir.

24 Q. And you stated that when Sanchez arrived,
25 you could feel tension --

1 MR. BECK: Objection, Your Honor.
2 Hearsay.

3 Q. Do you remember stating that you could
4 feel tension in the pod?

5 MR. BECK: Objection, hearsay.

6 THE COURT: I think that's still --
7 sustained.

8 BY MR. BURKE:

9 Q. All right. Who was it that you say you
10 remember going into cell 113?

11 A. Cell 113? I don't remember which cell
12 that is.

13 Q. I will represent to you that Fred Sanchez
14 was in 113. Then let me ask a leading question.
15 Isn't it true, sir, that you saw Raymond Rascon go
16 into the cell with Alonso?

17 A. I seen -- I remember seeing Raymond Rascon
18 walking back and forth with a beanie on, holding it
19 and breathing hard.

20 Q. Then he went into the cell with Alonso;
21 correct?

22 A. I don't remember seeing that, no, sir.

23 MR. BURKE: May I approach, Your Honor?

24 THE COURT: You may.
25

1 BY MR. BURKE:

2 Q. Having read that statement, sir, does it
3 refresh your memory that it was Raymond Rascon who
4 left the cell with Javier Alonso?

5 A. I still don't remember him coming out of
6 the cell, sir. I remember Raymond walking back and
7 forth.

8 Q. But you see that was your first and
9 immediate statement, that Raymond Rascon left the
10 cell with Alonso?

11 A. Yes, sir.

12 Q. All right. And that was actually your
13 first statement. You then made an additional
14 writing.

15 A. Yes, sir.

16 Q. Do you recall your written statement?

17 A. Some of it. Somewhat, yes, sir.

18 Q. All right. And your written statement,
19 which was in 2007, was the same: Raymond Rascon;
20 correct?

21 A. I would have to look at it again.

22 MR. BURKE: May I approach, Your Honor?

23 THE COURT: You may. We're not hearing
24 anything. What did you say, Mr. Hernandez?

25 A. That there -- I remember Cheeky's not

1 coming out of the room, but coming from that
2 direction.

3 BY MR. BURKE:

4 Q. Mr. Hernandez, do you remember in 2010
5 talking to the STIU about this matter? Have you
6 seen that statement?

7 A. I don't remember that, no, sir.

8 Q. Let me ask you, what happened to you after
9 2007? Where did you go?

10 A. I went to the North facility.

11 Q. And you were in segregation?

12 A. Yes, sir.

13 Q. And you weren't assaulted or anything?

14 A. No, sir.

15 Q. Do you remember stating in 2010 to the
16 STIU -- do you remember stating that it was Brian
17 Rascon?

18 MR. BECK: Objection, Your Honor.
19 Hearsay.

20 THE COURT: Are you trying to impeach a
21 prior statement?

22 MR. BURKE: Yes.

23 THE COURT: I think he is. So I'll allow
24 this. Overruled.

25

1 BY MR. BURKE:

2 Q. All right. Brian Rascon and Jesse
3 Trujillo were the ones giving directions; true?

4 A. Brian and Jesse, yes.

5 Q. And it was Jesse Trujillo who told you to
6 do the covering of the cameras; correct?

7 A. Yes, sir.

8 Q. Where have you been since 2010, sir?

9 A. Where have I been?

10 Q. Yeah.

11 A. I went to Los Lunas. I was sent from
12 several different places.

13 Q. And you haven't been assaulted or
14 anything?

15 A. I have been assaulted in the county jails,
16 yes, sir.

17 Q. But we have no record of that.

18 A. It happened, yes, sir.

19 Q. Let me ask you, when you saw the
20 indictment, who were the people that were named as
21 people involved in the killing of Fred Sanchez? It
22 was you, Alonso, and Edward Troup. Do you recall
23 seeing that?

24 A. Yes, sir.

25 Q. Was that quite a surprise, that Jesse

1 Trujillo and Raymond Rascon and Brian Rascon weren't
2 named in the indictment?

3 A. Yes, sir.

4 Q. And the reason it was a surprise is that
5 everybody was involved; right?

6 A. If I say that, that's --

7 Q. You don't want to say that because you'd
8 be afraid?

9 A. No, it's because I don't know who actually
10 got on top of him and killed him. I mean, I didn't
11 see that.

12 Q. All right. You didn't see it, and you
13 don't know who did it, and so you're focusing on who
14 actually did the killing now; is that right?

15 A. I don't understand. What do you mean?

16 Q. Everybody on the lower tier was involved
17 in this, weren't they?

18 A. At the time when it all first happened, I
19 thought, yes.

20 Q. Well, everybody had a role; correct?

21 A. Yes, sir.

22 Q. All right. And so it was a surprise that
23 you were the only one who was covering the cameras
24 who got named; not Jesse and not the other folks;
25 right?

1 A. Yes, sir.

2 Q. All right. And have you talked to the
3 prosecutors about that?

4 A. No, sir.

5 Q. All right.

6 MR. BURKE: Your Honor, may we approach?

7 THE COURT: You may.

8 (The following proceedings were held at
9 the bench.)

10 MR. BURKE: Your Honor, I now want to
11 impeach him with some video, but I have to get it
12 keyed up so...

13 THE COURT: Do you want to take a break?

14 MR. BECK: Can I get a copy of the police
15 report you used for the shotgun?

16 MR. BURKE: Sure. Absolutely.

17 THE COURT: Anything else?

18 MR. BECK: That's it.

19 THE COURT: I'll go ahead and send them
20 out, then.

21 (The following proceedings were held in
22 open court.)

23 THE COURT: All right. We're going to tee
24 up some video. So rather than you waiting, we'll
25 just take our recess. All rise.

1 (The jury left the courtroom.)

2 THE COURT: All right. Anything we need
3 to discuss, Mr. Beck, Mr. Castellano, Mr. Burke?

4 MR. BECK: No, Your Honor.

5 MR. BURKE: No, thank you.

6 THE COURT: All right. We'll be in recess
7 for about 15 minutes.

8 (The Court stood in recess.)

9 THE COURT: All right. I think we've got
10 all the attorneys and defendants in the courtroom.
11 Anything to discuss before we bring the jury in?

12 MR. BECK: No, Your Honor.

13 THE COURT: How about from the defendants?
14 Anything we need to discuss?

15 MR. BURKE: No, Your Honor.

16 (The jury entered the courtroom.)

17 THE COURT: Everyone be seated.

18 All right, Mr. Hernandez. I'll remind
19 you're still under oath.

20 Mr. Burke, if you wish to continue your
21 cross-examination of Mr. Hernandez, you may do so at
22 this time.

23 MR. BURKE: Thank you, Your Honor. The
24 Government provided us with some videos that are a
25 little clearer, and I'm going to ask you about them.

1 None of them are very long. Could I ask that BR1 be
2 displayed?

3 THE COURT: Do you want to admit these?

4 MR. BECK: Objection.

5 THE COURT: So is this Government's
6 Exhibit 647 coming in, and you're showing portions
7 of it?

8 MR. BURKE: That's basically it, except
9 it's the clearer one.

10 THE COURT: Right, 647. 648 was the --

11 MR. BECK: May we approach, Your Honor?

12 THE COURT: All right.

13 (The following proceedings were held at
14 the bench.)

15 THE COURT: So 648 was the grainy one that
16 we admitted. 647 is now the one that's got three
17 different camera angles.

18 MR. BECK: I think what's going on -- I
19 think Mr. Burke was a little confused. We have not
20 admitted 647 yet. I think BR-1, -2, and -3 are
21 portions of the other two camera angles that we will
22 offer under 647.

23 MR. BURKE: I'll move to admit BR-1, -2,
24 and -3, and ask that they be displayed.

25 THE COURT: What are we doing with 647?

1 Do you have any objection to it coming in? Let it
2 all in at the same time?

3 MR. BURKE: Yes.

4 (The following proceedings were held in
5 open court.)

6 THE COURT: All right. So Mr. Burke is
7 moving Exhibits BR-1, -2 and -3. The Government is
8 moving Exhibit 647. Any objection from any other
9 defendant on those? Not hearing or seeing any,
10 Government's Exhibit 647 will be admitted into
11 evidence. And Defendants' Exhibits BR-1, -2 and -3
12 will be admitted into evidence.

13 Mr. Burke.

14 (Government Exhibit 647 admitted.)

15 (Defendants' Exhibits BR-1, -2, and -3
16 admitted.)

17 BY MR. BURKE:

18 Q. So if we could take a look at BR-1 -- and
19 I don't know whether you want to look at the screen
20 or -- it's a little clearer. I'm going to ask you
21 to watch the lower -- the activity in the lower
22 railing.

23 (Tape played.)

24 Q. Do you see people moving there, sir?

25 A. Yes, sir.

1 Q. And they're coming around to the stairway,
2 they're going to come up the stairs. See the
3 movement there?

4 (Tape played.)

5 A. Yes, sir.

6 Q. Do you know who that is?

7 A. Jesse. Looks like Jesse.

8 Q. The next one?

9 (Tape played.)

10 Q. Now, is that you on your crutches?

11 A. Yes, sir.

12 Q. And who is talking to you?

13 A. That looks like Raymond Rascon.

14 Q. That's one of the Rascons.

15 Can we stop that?

16 Is that Jesse with the mop?

17 A. I want to say yes, but I can't tell.

18 Q. You believe it might be, but you're not
19 100 percent sure?

20 A. Yes, sir.

21 Q. Eventually that's the mop that was used to
22 cover the cameras; right?

23 A. No, sir. I believe it required a broom.

24 Q. Continue, please.

25 (Tape played.)

1 Q. Looking at the table, who is in the white
2 shirt?

3 A. I don't know. I can't see.

4 Q. Could it be Edward Troup? You're not
5 sure?

6 A. It looks like Edward Troup. It looks like
7 Edward Troup.

8 Q. He's seated at the table; correct?

9 A. Yes, sir.

10 (Tape played.)

11 Q. And there you are on your crutches;
12 correct?

13 A. Yes, sir.

14 Q. Sort of scouting the cameras? Is that
15 what you're doing?

16 A. No, sir.

17 Q. Okay. But you're going up stairs?

18 A. Yes, sir.

19 Q. You're going to talk to Kyle Dwyer or
20 Conrad?

21 A. I'm not sure who I'm --

22 Q. That first cell is Kyle Dwyer's?

23 A. The first cell is Kyle's.

24 Q. Okay. And you see that the time is about
25 6:14 and going on; right?

1 A. Yes, sir.

2 Q. Let's take a look at BR-2. There you are.
3 You're going to go to your cell. And I want you to
4 see who it is that joins you there.

5 (Tape played.)

6 Q. Mr. Hernandez, is this what's known as
7 tier time, people moving around?

8 A. Yes, but there's been times when the guys
9 have done certain things to keep their doors open.

10 Q. The doors stay open so guys can be out?

11 A. No, there was some times when they would
12 ask the CO if they could finish cleaning their cell,
13 and they would open the top tier and the guy that
14 was cleaning on the bottom, that was cleaning his
15 cell.

16 Q. Okay, I understand. That was not very
17 clear. But it was Jesse Trujillo who gave you the
18 wet towels that you came out and used to cover the
19 cameras; correct?

20 A. Jesse Trujillo gave me the towels, yes,
21 sir.

22 Q. All right. Let's take a look at BR-3.
23 This is the next morning, sir. Do you recognize you
24 on the left-hand side?

25 A. Yes, sir.

1 Q. You're seated there with Jesse Trujillo?

2 A. Yes, sir.

3 Q. At this point, Mr. Sanchez is deceased;
4 correct?

5 A. Yes, sir.

6 Q. And he is in the cell on the other side;
7 right?

8 A. He is in the cell.

9 Q. And you're joking there with Jesse
10 Trujillo?

11 A. I'm not joking.

12 Q. Mr. Troup is at the table on the right
13 side?

14 A. Yes, looks like Troup.

15 Q. Who is Mr. Troup with? One of the
16 Rascons?

17 A. That's Brian.

18 Q. They look alike don't they?

19 A. Brian is lighter; Cheeky is darker.

20 Q. I've asked Ms. Gilbert to move this a
21 little more quickly.

22 (Tape played.)

23 Q. What's going on upstairs? Is that second
24 tier being let out?

25 A. Yes, sir.

1 Q. So the second tier sometimes is out with
2 the first tier?

3 A. Like I said, the only -- when they would
4 let us out, they would tell the CO they either had
5 to clean their cell, but they could have a little
6 bit of time, or they would find an excuse to keep
7 the door open.

8 MR. BURKE: Okay. Thank you. Those are
9 my questions. That's all I want to do with the
10 videos.

11 THE COURT: Any other defendant have
12 cross-examination of Mr. Hernandez? Mr. Blackburn.

13 CROSS-EXAMINATION

14 BY MR. BLACKBURN:

15 Q. Mr. Hernandez, you had been at Southern
16 New Mexico for about a year before this incident
17 happened; is that correct?

18 A. Yes, sir.

19 Q. Is that yes?

20 A. Yes, sir.

21 Q. And you indicated earlier that you were a
22 little concerned at one point in time that -- well,
23 let me back up. This was basically entirely an SNM
24 pod; is that correct?

25 A. The whole unit was SNM.

1 Q. The whole housing unit; correct?

2 A. Yes, sir.

3 Q. And you knew that you had cooperated back
4 in 2012, had you not?

5 A. Yes, sir.

6 Q. And you cooperated in 2012 based upon the
7 incident that you spoke with Mr. Burke about, the
8 situation concerning the 1997 situation with Lorenzo
9 Chavez; correct?

10 A. Yes, sir.

11 Q. All right. And now, when you cooperated
12 in 2012, you were an SNM member, were you not?

13 A. No, sir.

14 Q. I'm sorry. When you had cooperated you
15 thought that -- you had already cooperated before
16 the situation happened in 2007; isn't that correct?

17 A. Yes, sir.

18 Q. So when you -- when things were happening
19 in Southern New Mexico, you were under the
20 impression that something may be happening to you
21 initially; is that right?

22 A. I was worried about it.

23 Q. You were worried. Okay. Because you had
24 been an SNM member, you knew the rules, but no one
25 knew that you had sort of cooperated; is that what

1 happened?

2 A. Yes.

3 Q. Well, actually, somebody did know what
4 happened, did they not?

5 A. I found out later that I guess Troup was
6 talking with -- Ben Clark told me that Troup told
7 him.

8 Q. No, let me back up. You knew -- there
9 were some people that relate to that situation with
10 Lorenzo Chavez. You knew that he was a high-ranking
11 member of the Los Carnales; right?

12 A. Yes.

13 Q. So you knew that the Los Carnales knew
14 what happened and the fact that you were
15 cooperating; isn't that true?

16 A. I did, but I also knew that they were mad
17 at Lorenzo, too.

18 Q. So you just were running under the radar
19 for a number of years. Is that safe to say?

20 A. Yes.

21 Q. So let me go forward a little bit.
22 Mr. Burke asked you about individuals that were
23 indicted in this particular case that related to
24 those individuals that were in that pod back in June
25 of 2007. Were there a lot of other people, like Mr.

1 Dwyer, other people like that who weren't charged in
2 this case? Jesse Trujillo? A lot of people weren't
3 charged as it relates to this matter, were they?

4 A. Some people aren't, yes, sir.

5 Q. All right. And eventually you knew --
6 well, you knew when you were indicted that they had
7 charged everybody with the death penalty in this
8 case, did they not?

9 A. The judge -- when the judge told me.

10 Q. The judge told you; right?

11 A. Yes.

12 Q. When you did your plea agreement,
13 eventually you did the plea agreement in this case,
14 and that was discussed last week. When you did your
15 plea agreement, you did not appear in front of this
16 judge, did you? It was not in front of Judge
17 Browning; right?

18 A. Yes.

19 Q. So you appeared in front of another judge
20 in this courthouse, a magistrate judge who took your
21 plea and asked you a bunch of questions; isn't that
22 true?

23 A. Yes.

24 Q. And he explained to you what you were
25 doing, but you also knew that in the end, he told

1 you that he was not accepting your plea yet. He was
2 deferring it to this judge; isn't that correct?

3 A. I don't remember that, but something to
4 that effect.

5 Q. To that effect. All right. And you knew
6 at that point in time that the judge that you were
7 going to appear in -- that the judge that would
8 eventually do your sentencing was going to be this
9 judge; not the judge that you were in front of;
10 isn't that correct?

11 A. I didn't know, sir.

12 Q. All right. You were at -- you mentioned
13 earlier with Mr. Burke and with the Government last
14 week that you had gotten -- while you were in
15 custody, after you were indicted, that you had done
16 narcotics and drugs with Ben Clark; isn't that
17 correct?

18 A. Yes, sir.

19 Q. And he supplied you with Suboxone, did he
20 not?

21 A. No, sir.

22 Q. He supplied you with meth and Suboxone,
23 did he not?

24 A. Meth. He gave me some meth.

25 Q. And eventually you were transferred from

1 that facility to another facility with Jerry
2 Montoya; isn't that correct?

3 A. Yes, sir.

4 Q. And when you went to Lovington or Lea
5 County, there was a situation that happened there
6 when you received methamphetamine and Suboxone from
7 Jerry Montoya; isn't that correct?

8 A. No, sir.

9 Q. Did you receive it from Richard Gallegos?

10 A. Some Suboxone from Richard Gallegos.

11 Q. Some Suboxone?

12 A. Yes.

13 Q. What about with Mr. Roy Martinez?

14 A. Some Suboxone.

15 Q. Suboxone. All right. And you knew that
16 group of all of you that went to Lea County, to
17 Lovington, had violated the rules not only as it
18 relates to receiving narcotics into the facility,
19 but also cellphones; isn't that correct?

20 A. The cellphone incident? I didn't know it
21 until I got busted.

22 Q. Well, eventually you found out that the
23 person that you're getting the drugs from, Jerry
24 Montoya, was also having a relationship with the
25 guard to bring in cellphones; isn't that correct?

1 MR. BECK: Objection to foundation.
2 Hearsay.

3 MR. BLACKBURN: I'm sorry. I'll rephrase
4 that.

5 BY MR. BLACKBURN:

6 Q. Did you know at some point in time while
7 you were there in Lea County that Jerry Montoya was
8 using a correctional guard to bring in cellphones?

9 A. I had an idea. Didn't know for sure.

10 Q. I didn't hear the last part. I'm sorry?

11 A. I had an idea, but I didn't know for sure.

12 Q. After you did your plea agreement in this
13 case, you and several other individuals were placed
14 in a pod where most of you were cooperating, were
15 you not?

16 A. Yes, sir.

17 Q. And you had sort of that little pod area
18 to yourself, and all of you had your tablets, did
19 you not?

20 A. Yes, sir.

21 Q. And eventually somebody figured out how to
22 wipe those tablets clean of the discovery, and load
23 Wi-Fi; is that correct?

24 A. Yes, sir.

25 Q. And you had had those tablets for a period

1 of time in order for each of you -- not only you,
2 but the other people that you were in custody
3 with -- to be able to look at the discovery in this
4 matter; is that right?

5 A. About a month and a half, yes, sir.

6 Q. About a month and a half. But you were
7 able to see a lot of the statements that everybody
8 had given in this case and the investigation that
9 the State had done and the Government had done;
10 isn't that correct?

11 A. No, sir. I didn't know how to look up. I
12 tried to look up my own statement by punching in my
13 name. I didn't know how to pick it up.

14 Q. So you weren't familiar with how to use
15 the tablet as well as some of the other people, were
16 you?

17 A. Yes, I wasn't.

18 Q. But some of those people that were in that
19 pod with you were on their tablet 24/7 because you
20 had the opportunity to do that, and they were
21 looking at their tablets repeatedly; right?

22 A. Yes, sir.

23 Q. And who were those people that were doing
24 that besides Ben Clark? Timothy Martinez?

25 A. Freddie Munoz, Timothy Martinez, Roy

1 Martinez.

2 Q. Roy Martinez?

3 A. Styx -- I forget -- Archuleta.

4 Q. Gerald Archuleta. All right. So they
5 were on their tablets constantly, were they not?

6 A. Not constantly. There were certain guys
7 that had signal in certain rooms, and they were kind
8 of stingy and wouldn't let you go in the room.

9 Q. Let me back up. I meant to say prior to
10 the time they wiped their tablets clean. Because
11 once you got the Wi-Fi capacity, you could no longer
12 look at your discovery; isn't that correct?

13 A. Yes, sir.

14 Q. But before that happened, a lot of those
15 individuals were always looking at their tablets to
16 look at the discovery, were they not?

17 A. I don't know. When I got there, the Wi-Fi
18 thing didn't last too much longer after I got there.

19 Q. All right. When you got the Wi-Fi, I
20 think you just said there were issues with being
21 able to connect to a good Wi-Fi outlet, so people
22 were stingy with letting you be able to use -- to be
23 in an area where you could get better Wi-Fi; right?

24 A. Yes, sir.

25 Q. And that caused issues because certain

1 people got to use Wi-Fi all the time; right?

2 A. Yes, sir.

3 Q. All right. But you weren't one of those?

4 A. I didn't have a good connection, no.

5 Q. No good connection. So -- but you used
6 that, although you may not have been familiar too
7 long with that tablet, you knew how to use it; you
8 learned how to access Facebook, did you not?

9 A. Yeah.

10 Q. You set up a Facebook account, didn't you?

11 A. Roy Martinez -- I already had a Facebook
12 account set up. Roy Martinez showed me -- well, he
13 stuck it in my tablet where I could just press a
14 certain button and it would go straight.

15 Q. Straight to Facebook; right?

16 A. Yes.

17 Q. And did you set up an email account?

18 A. I don't have an email account, no, sir.

19 Q. But you did do it to such an extent that
20 you were able to send pictures to your wife; right?

21 A. I sent pictures to the Facebook, yes.

22 Q. Through Facebook?

23 A. Through the Messenger, yes, sir.

24 Q. Through Messenger. You did not -- well,
25 you also allowed Roy Martinez and Timothy Martinez

1 to put pictures on your tablet, did you not?

2 A. To put -- they both put some naked
3 pictures.

4 Q. They both took pictures of their body
5 parts?

6 A. Yes, sir, they did. But I didn't know
7 that.

8 Q. But they put them on your tablet, and you
9 knew they were on your tablet, did you not?

10 A. No, sir, not until I was looking through
11 it, and I seen a picture of Timothy standing up
12 naked, and then another picture of Roy Martinez,
13 with his genitals in a picture. And as I was going
14 through, I remember Paul Rivera looking and
15 laughing. Oh, I was embarrassed kind of, yeah.

16 Q. Well, yeah, I mean, Timothy Martinez took
17 a fully naked picture of himself, and Roy Martinez
18 took a picture of his penis and put it on your
19 tablet, did he not?

20 A. Yes, sir.

21 Q. And you didn't know about that until you
22 saw it later?

23 A. I didn't know about it, no, sir.

24 Q. And everybody lost their tablets after
25 that; isn't that true?

1 A. Yes, sir.

2 Q. And anybody that was cooperating with the
3 Government at that time lost their privileges
4 thereafter; is that correct?

5 A. Yes, sir.

6 Q. So from that day forward you didn't get
7 your money; right?

8 A. No, sir, not from that day forward, no, it
9 was...

10 Q. Not from what?

11 A. They cut it off later.

12 Q. It took them a few months to find out what
13 you guys were doing, did it not?

14 A. Yes, sir.

15 Q. So what I understand that you have said
16 today is that the situation as it relates to Fred
17 Sanchez in June, June 16 and June 17, in 2007,
18 actually happened the night before as opposed to the
19 morning that they discovered the body; is that
20 right?

21 A. Yes, sir.

22 Q. Because I think you said that you had gone
23 that afternoon and played basketball, and then
24 that's when everybody started talking about what was
25 going to happen; there was a meeting about what was

1 going to happen; right?

2 A. The meeting happened while he was in his
3 room.

4 Q. When he was in his room. But all of the
5 things that we saw on the video happened on a
6 Saturday afternoon or a Saturday evening around 6:00
7 to 7:00. Is that right?

8 A. When we got back from the gym.

9 Q. When you got back from the gym. And the
10 body wasn't discovered until like 11:00 the next
11 morning; is that correct?

12 A. I don't know exactly what time it was, but
13 it was sometime the next day.

14 Q. Well, we saw you guys down -- we saw a
15 bunch of people in the pod on Sunday morning, and
16 they still had not discovered the body; isn't that
17 correct?

18 A. Yeah.

19 Q. And you said you did not know Fred
20 Sanchez. Is that what you're saying?

21 A. I had never met him before, prior to this.

22 Q. I thought that you had made a statement
23 that said that you did not believe that Fred
24 Sanchez -- that no one believed that he was on his
25 way down to Southern New Mexico. Was that not you?

1 A. I don't recall that.

2 Q. All right. So let's -- let me ask you
3 about -- first of all, you were housed in the blue
4 pod, and is it your testimony that the keyholder
5 before of that pod -- before, for a while -- was Ern
6 Dog; right?

7 A. Ern Dog, yes, sir.

8 Q. But then I think you made it -- but then
9 Paul Silva -- he was in charge of the yellow pod?

10 A. I believe so. I'm not positive, but I
11 believe so.

12 Q. And as Mr. Burke pointed out earlier,
13 Brian Rascon and you were in charge of the blue pod;
14 right?

15 A. Brian was. I wasn't.

16 Q. But you saw the document that says that
17 you said that you were in charge of the blue pod;
18 right?

19 A. I saw the document, yes.

20 Q. Right. So you told the FBI at some point
21 in time that you were in charge of the blue pod
22 also; right?

23 A. I don't recall telling them. No, I don't
24 remember that.

25 Q. But you saw that document that said --

1 A. I did.

2 Q. -- that they wrote down that you said that
3 you and Rascon were in charge of the blue pod;
4 correct?

5 A. Yes, sir.

6 Q. But there is no question that after
7 Benjamin Clark got back there, that as soon as he
8 arrived, he became the keyholder of the blue pod;
9 isn't that correct?

10 A. And we talked about this. He told me that
11 Ern Dog had sent him a message telling him he could
12 have the keys, and he told me he told Ern Dog to go
13 ahead and keep doing what he's doing.

14 Q. Again, Mr. Hernandez, did you not tell the
15 FBI when you talked with them, just on March 20 of
16 2018, just a few months ago before this trial
17 started, that Benjamin Clark arrived and became the
18 keyholder of the blue pod? Did you not tell them
19 that?

20 A. I told them that when he spoke, people
21 listened; it was his presence was enough to be the
22 keyholder. But again he told me himself that Ern
23 Dog -- he left the keys in Ern Dog's hands.

24 Q. Did you not tell the agents and basically
25 Mr. Beck when they talked with you on March 20,

1 Benjamin Clark arrived at Southern New Mexico and
2 became the keyholder of blue pod? Did you not make
3 that statement to them?

4 A. I don't remember making that statement,
5 but he was the keyholder; he was the man.

6 Q. So Clark was in charge, basically? That's
7 what you're saying?

8 A. If he wanted to, yes.

9 Q. Well, Clark was in charge of the situation
10 that relates to the murder of Fred Sanchez, was he
11 not?

12 A. I don't know. His presence there was
13 enough for the other guys to want to earn brownie
14 points with him and people looked up to him. So
15 just his presence there would probably have been
16 enough to do what they had to do.

17 Q. Well, you know, do you not, that at one
18 point in time Clark was in charge of the paperwork,
19 what he called the paperwork, and he showed it to
20 everybody that he thought needed to know about it.
21 Isn't that true?

22 A. He gave the paperwork back to Kyle and
23 told him that everybody that had to see it had seen
24 it.

25 Q. That everybody that had to see it has seen

1 it. And he told Dwyer to get rid of it, did he not?

2 A. He gave it to Dwyer.

3 Q. So he was the one that was controlling the
4 movement of the paperwork; right?

5 A. I seen him hand the paperwork to Kyle.
6 That was it.

7 Q. At the end of it?

8 A. Yes.

9 Q. Right, but you didn't know anything about
10 how -- you were not involved in Dwyer giving the
11 paperwork initially to Clark; right?

12 A. Ben told me that he remembers that Kyle
13 gave me the paperwork; that he took the paperwork
14 from me and said, "What are you doing?" And he got
15 the paperwork, but I don't recall that. I don't
16 remember that.

17 Q. So now Ben Clark is refreshing your memory
18 with his statement that he took the paperwork from
19 you, but that's not something that you remember, and
20 it's never something that you've ever told the FBI
21 in your number of interviews; isn't that true?

22 A. I just don't remember the situation
23 happening.

24 Q. Well, you talked to the state police, you
25 talked to the STIU guys the day after this happened,

1 did you not?

2 A. Yes, sir.

3 Q. Okay. And you didn't tell them that then;
4 right?

5 A. I don't remember telling that.

6 Q. And then you wrote a letter to the STIU
7 guys, a letter that Mr. Burke talked about, a
8 two-or-three-page letter that you also gave to the
9 STIU guys; isn't that correct?

10 A. I remember writing a few letters, yes,
11 sir.

12 Q. And then two weeks later the state police
13 came and talked with you in Bernalillo -- came and
14 talked to you in Santa Fe, and you gave another
15 statement, did you not?

16 A. I don't remember giving another statement.

17 Q. Well, you gave three statements within a
18 two-week period of time, and nowhere in there did
19 you ever say anything about you being in charge, you
20 seeing the paperwork; isn't that true?

21 A. I don't remember that. I just remember --

22 Q. Well, let me ask you, in all the number of
23 statements that you have given, have you ever said
24 that you somehow were involved in the paperwork as
25 it relates to Ben Clark?

1 A. I don't remember telling anybody. But I
2 remember specifically Ben giving the paperwork back
3 to Kyle and telling Kyle everybody that had to see
4 it had seen it.

5 Q. I understand that. But you told us a
6 while ago that Ben Clark told you that initially he
7 got the paperwork from you. That did not happen;
8 right?

9 A. Well, he told me that. I don't remember
10 it happening.

11 Q. Okay. Again, despite the fact that he
12 told you that, you don't remember that. When did he
13 refresh your memory? Just a couple of weeks ago?

14 A. No, sir. He told me this when we were
15 housed in Sandoval. No, he told me when we were
16 housed in Western.

17 Q. In where?

18 A. In Western.

19 Q. All right. So since that time you've met
20 with the Government or the FBI about two or three
21 more times, but you've never told them that Ben
22 Clark refreshed your memory or tried to refresh your
23 memory about something you can't recall happening
24 concerning the paperwork; isn't that true?

25 A. I do remember that.

1 Q. Let me ask you something. So you showed
2 us on Government's Exhibit 281-A the place where
3 everybody was at, where you were located, and the
4 cells. Where was Kyle Dwyer at in relation to your
5 cell?

6 A. I remember him being right above me.

7 Q. So he's above you. So if you're talking
8 to Dwyer, how would you talk to Dwyer?

9 A. I don't remember. I just remember the
10 door being open and we were talking. I remember I
11 went in his room and he showed me a picture of his
12 girlfriend. She was a stripper. She had on a
13 American flag bikini. Whenever we came out of the
14 room -- and when we came out of his room, that's
15 when Benjamin gave him the paperwork. But his door
16 was open.

17 Q. Gave him the paperwork after it had
18 already been passed around?

19 A. I believe so. He told Kyle everybody that
20 had to see it has seen it.

21 Q. Did you not say in a statement before that
22 that conversation occurred through the food port;
23 that through the food port that Dwyer gave the
24 paperwork back to Clark?

25 A. I don't remember that. I remember the

1 door being opened and he was showing a picture of
2 his girlfriend, and I remember that.

3 Q. I'm sure you have reviewed a number of
4 times the statements that you have made in this
5 case, have you not?

6 A. I haven't, no, sir.

7 Q. You've never looked at them?

8 A. No. I looked at one statement.

9 Q. Pardon me?

10 A. I looked at one.

11 Q. Which one?

12 A. It was a handwritten statement.

13 Q. The handwritten statement that you -- your
14 handwritten letter that you wrote a couple days
15 after this incident occurred? Is that what you're
16 saying?

17 A. I don't remember when, but I read one of
18 the statements.

19 MR. BLACKBURN: Okay. May I approach,
20 Your Honor?

21 THE COURT: You may.

22 BY MR. BLACKBURN:

23 Q. Now, does that refresh your memory?

24 A. I don't remember through the food port,
25 but I remember.

1 Q. But you did say that the time this issue
2 was going on occurred through the food port; that's
3 where this conversation was going on; isn't that
4 correct?

5 A. That's what it says there, yes, sir. I
6 don't remember that, though. I do specifically
7 remember being in his room and he was showing me
8 pictures of his wife and --

9 Q. Wasn't there a time that -- after all of
10 this happened that basically Dwyer came to your cell
11 and asked you to pass a kite to Gumby; right?

12 A. I believe I went to his cell.

13 Q. You were in his cell. All right. But
14 that's when the doors were opened, though; right?

15 A. No, the doors were shut.

16 Q. All right.

17 A. I believe they were shut.

18 Q. During the course of this whole entire
19 investigation or any interview that you ever gave
20 with the FBI or with the U.S. Attorney's Office, you
21 have never said anything about Arturo Garcia, have
22 you?

23 A. No, sir.

24 Q. And he had nothing to do with this, did
25 he, as far as you know?

1 A. When the incident was going on, I didn't.
2 Later on I was told that he was --

3 Q. Well, you were told something, but you
4 yourself know nothing from anything that you saw
5 under any circumstances; right? What you were told
6 was based upon what people saw on the tablets; isn't
7 that correct?

8 A. Yes, sir.

9 Q. All right. Thank you.

10 MR. BLACKBURN: I have nothing further,
11 Your Honor.

12 THE COURT: Thank you, Mr. Blackburn.

13 Any other defendant have cross?

14 Mr. Sindel.

15 CROSS-EXAMINATION

16 BY MR. SINDEL:

17 Q. Good morning. My name is Richard Sindel.
18 I represent Joe Gallegos and I noticed that you
19 never mentioned him in any of your testimony;
20 correct?

21 A. Yes, sir.

22 Q. There were a couple things that I wanted
23 to address with you, and one was the fact that you
24 testified here that Ben Clark came to you and told
25 you something that you claim you did not remember

1 happening; right?

2 A. Yes, sir.

3 Q. And that happened, I think you said, in
4 Sandoval County?

5 A. In Sandoval and in Western.

6 Q. And you both at that point in time had
7 agreed to cooperate; right?

8 A. Yes, sir.

9 Q. So that at least Ben Clark and maybe the
10 others were getting together and discussing what was
11 about you on your tablet, and what the discovery
12 was, and what they remembered; right?

13 A. No, sir.

14 Q. Well, he came to you and said, "Look, this
15 is what happened"; right?

16 A. We were having a conversation about it,
17 and he had given me -- Kyle had given me the
18 paperwork, and I said, "No, he didn't."

19 Q. How did he know what you said about the
20 paperwork? Was it on the tablet?

21 A. No, what do you mean, how?

22 Q. How did he know what you were saying about
23 the paperwork? How did Ben Clark know what it was
24 you were saying?

25 A. Well, I don't remember what the

1 conversation was about or what brought the issue up.
2 But he told me, "Don't you remember I gave you --
3 Kyle gave you the paperwork, and I took it and told
4 Kyle what was wrong with him, that I didn't need
5 it?"

6 And I told him I didn't remember that.

7 Q. Well, okay. So then you're in a situation
8 where Ben Clark is trying to at least either remind
9 or convince you of a certain fact involving the
10 investigation of the Sanchez murder; right?

11 A. Probably trying to remind me, yes, sir.

12 Q. Okay. And either remind you or influence
13 you, correct? And you said, "Well, I just can't
14 remember it. I don't remember it the way you're
15 telling me."

16 A. He brought it up. He asked me. I told
17 him I didn't remember it. And we left it at that.

18 Q. Do you know who else Ben Clark was trying
19 to remind of certain facts he wanted them to testify
20 to?

21 A. No, sir.

22 Q. Now, I'm assuming when you said that you
23 were going to cooperate with the Government, they
24 set out certain conditions that you had to abide
25 with; right?

1 A. When I first started cooperating, that was
2 from the second day, the day after Fred was killed.
3 As soon as they took me for questioning, that's when
4 I started cooperating. I never said -- well, yeah.

5 Q. Yep, yep, yep. So they said basically
6 that there are certain conditions they put on people
7 who agree to cooperate, and one of those is: You're
8 not going to violate any federal or state law;
9 right?

10 A. What do you mean, not violate?

11 Q. Don't they indicate to you at some point
12 in time when you've agreed to cooperate that you
13 need to be a good boy, you shouldn't be out there
14 breaking the law?

15 A. Yes, sir. They did tell me that.

16 Q. And you say, "Don't worry, because I'll
17 abide by those conditions"; right?

18 A. Their specific words were: "Don't make us
19 look bad."

20 Q. But I mean, whether those specific words
21 were there, certainly you didn't tell them, "Look, I
22 intend to tell you one thing but do another", did
23 you?

24 A. What do you mean?

25 Q. Well, did you tell them that you weren't

1 going to use methamphetamine anymore?

2 A. I did not tell them that, no.

3 Q. Did you tell them that you weren't going
4 to use Suboxone anymore?

5 A. I've never done Suboxone, so I got -- I
6 don't know.

7 Q. Did you tell them you weren't going to be
8 involved in either distributing or using drugs
9 anymore?

10 A. No, sir, I didn't.

11 Q. So they never cared if you used
12 methamphetamine; right?

13 A. They didn't say that.

14 Q. So that was never any part of your
15 condition as far as you were concerned. The
16 Government was, at least initially, just fine with
17 you continuing to use illegal narcotic substances?

18 A. No, sir.

19 Q. You didn't think that that was all right,
20 did you? You thought that was a violation of your
21 agreement and understanding with the Government,
22 didn't you?

23 A. I didn't think about it. I just did it.

24 Q. Well, did you think about it afterwards?

25 A. No, sir.

1 Q. All right. So you just went with the flow
2 of what you wanted to do; right?

3 A. Yes, sir, I did.

4 Q. And every agreement that you have made
5 with the Government, you understood that you could
6 violate that if you wanted to; right?

7 A. I didn't -- yes, I messed up. I did
8 drugs.

9 Q. You violated that agreement?

10 A. Yes, sir, I did.

11 Q. And you did it willingly and
12 enthusiastically, didn't you?

13 A. I did it because I like to get high. I
14 got high.

15 Q. And when you got the tablets -- I mean,
16 was that the very first time that you'd ever had
17 discovery given to you on a tablet like that?

18 A. Yes, sir.

19 Q. And it made reviewing the discovery a lot
20 easier?

21 A. Somewhat. I had trouble. I had trouble
22 with it, yeah.

23 Q. Well, some of the guys were much better
24 than you, but you eventually learned how to use it?

25 A. Yes.

1 Q. And you learned how to use it to the point
2 where you could contact, I think you said, your wife
3 on Facebook?

4 A. Yes, sir.

5 Q. And you contacted other women on Facebook?

6 A. Yes, sir.

7 Q. Did you send them any of the photographs
8 that were on your tablet?

9 A. Just the picture of me.

10 Q. Just the picture of you. And you knew
11 that when you were using Facebook and connecting to
12 the Wi-Fi, that was a violation of the agreement
13 that you had with the Government?

14 A. Yes, sir.

15 Q. And you didn't do that by accident; you
16 violated that agreement willingly, didn't you?

17 A. Yes, sir. I found an opportunity to talk
18 to my wife for free, and I took the opportunity.

19 Q. So that when you decide it's in your
20 interest to violate the agreement, you've done so;
21 right?

22 A. Yes, sir.

23 Q. I want to ask you a couple of questions
24 about your presentence investigation. I think you
25 said you reviewed part of that; is that correct?

1 A. I seen parts of it on one of the guys'
2 tablets.

3 Q. Well, didn't you -- didn't your attorney
4 make that available to you for you to review?

5 A. I haven't got that yet.

6 Q. Do you remember when it was that you were
7 initially interviewed by the probation office?

8 A. Sometime in the past eight months.

9 Q. It was quite some time ago. It was very
10 shortly after you entered your plea of guilty?

11 A. I don't remember how long, but yes.

12 Q. Well, if it indicates on the presentence
13 investigation report that it was prepared on January
14 22, 2018, would you have any reason to dispute that
15 date?

16 A. When I would talk to the probation or --

17 MR. SINDEL: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. SINDEL:

20 Q. I'm going to show you a document, and
21 you're going to need to pull that microphone when
22 you answer that. Nice glasses. It's labeled the
23 presentence investigation report; is that right?

24 A. Yes, sir.

25 Q. And it has your name, Ruben Hernandez; is

1 that right?

2 A. Yes, sir.

3 Q. And there at the bottom it indicates that
4 it was prepared on January 22, 2018?

5 A. Yes, sir.

6 Q. And this document has a number of things
7 in it, including your conviction record; correct?
8 Various crimes that you've committed over the course
9 of your lifetime?

10 A. Yes, sir.

11 Q. And it has information in there about
12 certain characteristics about you, most of that
13 which is blocked out; right?

14 MR. BECK: Your Honor, he might ask if
15 he's seen this. I think counsel is testifying at
16 this point.

17 THE COURT: Ask him if he's seen this
18 document before.

19 BY MR. SINDEL:

20 Q. Have you seen this document?

21 A. No, sir.

22 Q. You've never seen this document?

23 A. No.

24 Q. You just told us you had reviewed parts of
25 the presentence investigation report.

1 A. I did.

2 Q. Was this document in anything?

3 A. I didn't see that document. But I seen a
4 page that they showed me.

5 Q. One page?

6 A. The guys who were being nasty to me got
7 one page.

8 Q. Well, has anyone ever talked to you at all
9 about how -- what the presentence investigation is
10 meant to do?

11 A. People have talked to me about it, but
12 I've not sat down and discussed it with my attorney
13 yet.

14 Q. Well, at the time that you entered your
15 plea of guilty, did the Court explain to you that
16 there was going to be a presentence investigation
17 report prepared?

18 A. Yes, sir, he told me that the probation
19 and parole would meet with me.

20 Q. And they would want to speak to you and
21 they would want to accumulate certain facts about
22 your background.

23 A. Yes, sir.

24 Q. And when you went and talked to them, they
25 asked you to sign certain documents that released

1 information about your past?

2 A. Yes, sir.

3 Q. Your mental health history?

4 A. Yes.

5 Q. Correct?

6 A. Yes, sir.

7 Q. And if you did all that, you signed those
8 documents. Did you -- and the Court told you that
9 the presentence report was going to be an important
10 factor in the Court's making a decision about what
11 sentence you would receive?

12 A. Yes, sir.

13 Q. All right. So you know that there are
14 basically two factors that the Court -- or that the
15 Court may consider in terms of making a sentencing
16 decision?

17 MR. BECK: Objection, foundation.

18 THE COURT: Well, if he knows. You can
19 ask him if he knows that foundational question.

20 BY MR. SINDEL:

21 Q. Do you know that the Court will be looking
22 at least at a minimum of two more factors in making
23 a determination about what your sentence is?

24 A. I know now, yes, sir.

25 Q. And I'm sorry, you said you know now?

1 A. Yes, sir.

2 Q. Well, when was now?

3 A. The other gentlemen that I've been locked
4 up with would ask their lawyers about it, and then
5 they would come and tell me.

6 Q. You've got to speak up. I'm sorry, I'm
7 old and "deef."

8 A. The other guys I'm locked up with would
9 ask their attorneys what was -- what would happen.
10 And they tried to explain to me about the points,
11 and I don't understand all of that, but they tried
12 to talk to me about it. And the guys were being
13 mean to me, so they showed me a page. "You're done.
14 You're going to prison forever," but...

15 Q. Who are the other guys?

16 A. That would be Roy Martinez and Eugene
17 Martinez.

18 Q. So this is another set of cooperators that
19 are talking to you about what may happen in your
20 case; right?

21 A. They told me what could happen, yes, sir.

22 Q. What could happen. And they talked to you
23 about the presentence investigation and you knew
24 that the Court would be considering that information
25 as well as how the members of the prosecution team

1 graded your performance on the witness stand; right?

2 A. I don't understand that.

3 Q. In other words, you know that they're
4 filing what's called -- or they may file what's
5 called a 5K motion?

6 A. I heard talk about it. I don't understand
7 all that yet, but...

8 Q. When you say, "We talked about it," are
9 you talking about Martinez, Ben Clark, those guys?

10 A. My lawyer mentioned to me a few times the
11 5K.

12 Q. Your lawyer -- I don't want to go into
13 your conversations, but did you understand from
14 those conversations that there was a motion that the
15 Court would file to allow -- I'm sorry, that the
16 prosecution would file that would allow the Court to
17 go below your sentencing guidelines?

18 A. Yes, sir.

19 Q. And you understood that at least in
20 federal court, the sentencing guidelines were one of
21 the determining factors that the Court must consider
22 in trying to craft a sentence appropriate for the
23 crime you've admitted to committing?

24 A. I don't understand that.

25 Q. Did you know that the sentencing

1 guidelines played any part in the sentencing
2 decision that the Court would make?

3 A. Yes, sir, I had a good idea it is.

4 Q. You knew that. And you knew that the
5 presentence report would contain information about
6 your sentencing guidelines?

7 A. I didn't know that.

8 Q. You did not know that. So no one has ever
9 reviewed that?

10 A. I have not. I don't know much about my
11 plea, the plea. Sorry, but yeah.

12 Q. So if the report was prepared January 22
13 of 2018, that entire four-to-five-month period, no
14 one has discussed with you its contents?

15 A. No, sir.

16 Q. Are you aware that you can file objections
17 to the presentence report?

18 A. No, sir.

19 Q. Are you aware that your attorney can point
20 out various facts in the presentence report that are
21 inaccurate?

22 A. No, sir.

23 Q. And you certainly can't do that if you
24 haven't seen it, can you?

25 A. No, sir.

1 Q. So if the presentence report indicates
2 that --

3 MR. BECK: Objection to hearsay.

4 MR. SINDEL: I haven't asked the question
5 yet.

6 THE COURT: Let me see what the question
7 is.

8 BY MR. SINDEL:

9 Q. That you went in to Bobby Farnborough's
10 residence armed with a shotgun; that's not what
11 you've testified to here today, is it?

12 MR. BECK: Objection to hearsay.

13 MR. SINDEL: It's impeaching, Your Honor.

14 THE COURT: Well, I agree. Overruled.

15 A. I pled guilty to that crime.

16 BY MR. SINDEL:

17 Q. What?

18 A. I pled guilty to that crime.

19 Q. Right. And it says -- you said that,
20 "Hey, I'm just sitting out in the car. I don't
21 really know what's going on"; right? That's what
22 you told them?

23 A. I gave the guys a ride.

24 Q. As far as you know, you've never objected
25 or anyone has objected on your behalf to the

1 statements that are in the presentence report that
2 you entered Bobby Farnborough's residence armed with
3 a shotgun and committed a battery on
4 Mr. Farnborough; right?

5 A. I did not say that, no, sir.

6 Q. You didn't say that?

7 A. No, sir.

8 Q. And you've not objected to that?

9 A. No, sir.

10 Q. And you have not said, "Look, that's in
11 there; that's not correct"?

12 A. I took a plea for all that, so I just pled
13 guilty to the charge.

14 Q. Do you know what a criminal history
15 category is?

16 A. No, sir.

17 Q. Do you know that the Court, in making a
18 determination of your sentencing guidelines, that
19 they look at your criminal history category?

20 A. The guys explained something to that
21 effect to me.

22 Q. And do you know at least in terms of the
23 sentencing that there is an offense level on the
24 left side of the graph and your sentencing category
25 along the top?

1 A. I don't know that, no. I don't know
2 anything about that.

3 MR. SINDEL: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. SINDEL:

6 Q. I'm going to show you what's entitled the
7 Red Rules Book, and you see there on the back page
8 there is a sentencing table. Do you see that?

9 A. Okay.

10 Q. You have to speak in the microphone.

11 A. Yes, sir.

12 Q. And can you see here along the left side
13 there is a series of numbers?

14 A. Yes, sir.

15 Q. And above those numbers it says "offense
16 level"?

17 MR. BECK: Objection, Your Honor. Counsel
18 is testifying.

19 THE COURT: Well, just ask if he's ever
20 seen this chart before.

21 BY MR. SINDEL:

22 Q. Have you ever seen this chart or a chart
23 similar to it?

24 A. No, sir.

25 Q. You've never seen one that indicates your

1 criminal history category, either?

2 A. No, sir.

3 Q. Are you aware that your presentence
4 investigation report puts your criminal history
5 category at 6, the highest level there is?

6 A. No, sir.

7 Q. And are you aware that the presentence
8 report indicates that your offense level is 36?

9 MR. BECK: Objection to hearsay.

10 THE COURT: Sustained.

11 MR. SINDEL: I'm sorry, what?

12 THE COURT: Sustained.

13 BY MR. SINDEL:

14 Q. Do you know what your offense level is?

15 A. No, sir.

16 Q. Do you care?

17 A. Yes, sir. The guys told me that it was a
18 43.

19 MR. BECK: Objection.

20 THE COURT: Sustained.

21 BY MR. SINDEL:

22 Q. Do you know what your offense level is?

23 A. No, sir.

24 Q. Was it part of any plea agreement that you
25 signed and prepared?

1 A. My offense level?

2 Q. Yes.

3 A. Was it part -- I haven't seen it. If it
4 was, I didn't see it. I don't know the offense
5 level, what that is. The guys told me something
6 about it, 43, or something like that.

7 Q. I'm sorry, I couldn't hear the last part.

8 A. The guys told me 43.

9 MR. BECK: Objection, hearsay.

10 THE COURT: Sustained.

11 BY MR. SINDEL:

12 Q. When you are on the tier, do you wear
13 basically the same clothes as the other men on the
14 tier? Looked like gray pants and T shirts, if you
15 wanted to wear a shirt. Is everybody pretty well
16 dressed alike?

17 A. Some people wear cutoff shorts from the
18 uniforms. Some people wear sweats, sweat shorts.

19 Q. Were you able -- when they were showing
20 you that exhibit, were you able to identify any
21 facial features?

22 A. Yes.

23 Q. All right. And were you able to determine
24 if people had mustaches or beards from the video?

25 A. I couldn't see them, no, sir.

1 Q. Could you determine from the video what
2 kind of clothing they were wearing that you saw that
3 the Government showed you?

4 A. I could see the gray shorts, a couple T
5 shirts, and sweaters, whatnot.

6 Q. Did you see any logos on any of that
7 stuff?

8 A. No, sir. If there was, I couldn't see
9 them.

10 Q. It was pretty dark, wasn't it?

11 A. A little bit, yes, sir.

12 Q. I'm going to call your attention to a
13 report that was prepared by the FBI in February of
14 2012 as a result of an interview with you. Have you
15 had a chance to look that over?

16 A. No, sir, by interview --

17 MR. SINDEL: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. SINDEL:

20 Q. I'm going to show you -- you can see up
21 here in the left-hand corner, do you see that
22 number, 302. Do you see that?

23 A. Yes, sir.

24 Q. And do you see your name, Ruben Hernandez,
25 there?

1 A. Yes, sir.

2 Q. And do you see that there is a date down
3 here, investigation on February 27, 2012?

4 A. Yes, sir.

5 Q. Have you seen this document?

6 A. No, sir.

7 Q. I want you to read this to yourself at
8 this point in time.

9 MR. BECK: Objection, Your Honor. I don't
10 think his memory needs to be refreshed as to what
11 the document says.

12 THE COURT: Well, he's asking if he's seen
13 this document. Have him look at it enough so he can
14 see whether he's seen it before. So I do think
15 there is a little refreshment here. Overruled for
16 the time being.

17 BY MR. SINDEL:

18 Q. Were you able to read that?

19 A. Yes, sir, I did.

20 Q. Now --

21 THE COURT: So let's go back to the
22 question: Did he see the document? Because that's
23 the one you're refreshing him on.

24 Q. Have you ever seen this document before?

25 A. I don't remember seeing it, no, sir.

1 Q. Do you recall telling the FBI --

2 MR. BECK: Objection to hearsay.

3 THE COURT: Well, are you trying to
4 impeach a prior statement?

5 MR. SINDEL: I am, Your Honor.

6 THE COURT: What's the statement you're
7 trying to impeach?

8 MR. SINDEL: The statement has to do with
9 the circumstances surrounding why he acted the way
10 he did in June of 2012 -- or 2007.

11 THE COURT: I think you're going to have
12 to be more specific than that. What's the specific
13 statement you're trying to impeach?

14 MR. SINDEL: Well, let me rephrase the
15 question.

16 THE COURT: All right.

17 BY MR. SINDEL:

18 Q. You testified you were asked to
19 participate in the eventual murder of Mr. Sanchez;
20 correct? That's what you testified to here today?

21 A. They told me to cover the cameras, yes,
22 sir.

23 Q. Now, you have to speak up.

24 A. They told me to cover the cameras. They
25 asked me to cover the cameras.

1 Q. And did you believe at that time that if
2 you didn't follow that order, you would be targeted
3 by the SNM?

4 A. Yes, sir.

5 Q. And did you fear that you would be -- that
6 you could pay for your life if you didn't follow
7 that order?

8 A. Yes, sir.

9 Q. And you have said that to people in the
10 past, have you not?

11 A. I have said --

12 MR. BECK: Objection to hearsay.

13 THE COURT: Sustained.

14 BY MR. SINDEL:

15 Q. Did you believe that to be true, that you
16 could pay for your life if you didn't follow their
17 orders?

18 A. I believe it could happen, yes, sir.

19 Q. How much money have you received from the
20 federal government in connection with your testimony
21 here today?

22 A. Right offhand, I couldn't tell you. I'm
23 going to guess about \$1,100.

24 Q. \$1,100. And early on in your testimony
25 you said that you were walking on eggshells. That

1 was the word you used. Do you remember that?

2 A. I walked like that for a few months.

3 Q. And that's because if you don't do what
4 the SNM orders you to do, you could die, you could
5 be murdered; right?

6 A. I was walking on eggshells because I
7 thought they were going to find out I told on
8 somebody.

9 Q. And if they found out that you broke a
10 rule by being a informant or refusing to carry out a
11 direct order, you could pay for it with your life?

12 A. I didn't know if they would kill me, but I
13 know they would assault me in some way.

14 Q. Well, certainly you said -- I'll rephrase
15 that. Do you remember ever stating that you feared
16 for your life if you didn't follow a direct order?

17 A. I don't remember stating that, but I did
18 fear for my life.

19 Q. Is that true?

20 A. I feared for my life.

21 MR. SINDEL: That's all I have.

22 THE COURT: Thank you, Mr. Sindel.

23 Any other defendant have cross-examination
24 of Mr. Hernandez?

25 All right, Mr. Beck. Do you have redirect

1 of Mr. Hernandez?

2 MR. BECK: Yes.

3 THE COURT: Mr. Beck.

4 REDIRECT EXAMINATION

5 BY MR. BECK:

6 Q. You were asked by Mr. Burke about some
7 mental illnesses in your presentence report. Do you
8 remember that?

9 A. Yes.

10 Q. Were you diagnosed with PTSD, anxiety, and
11 bipolar disorder after June of 2007?

12 A. It was after this incident, yes, sir.

13 Q. You were also asked about Ben Clark being
14 the keyholder. Do you remember that?

15 A. Yes, sir.

16 Q. I think you were shown this March 20,
17 2018, FBI 302 report. Do you remember that?

18 A. I was shown it?

19 Q. Yeah. Do you want me to show it to you
20 again? Would that refresh your memory?

21 MR. BECK: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. BECK:

24 Q. Do you remember being shown this 302
25 report a number of times? The third page may

1 refresh.

2 A. You were asking me if I just recently saw
3 this?

4 Q. Do you remember the other attorneys
5 showing it to you?

6 A. Yes, sir.

7 Q. And in that first paragraph under what's
8 labeled "Fred Sanchez," does it talk about Benjamin
9 Clark in that paragraph?

10 A. Yes.

11 Q. Does it say he became the keyholder of
12 blue pod?

13 A. Yes, sir.

14 Q. You talked about Ernest Guerrero. Do you
15 remember what was his position at Southern at the
16 time?

17 A. That's Ern Dog; right?

18 Q. Right.

19 A. Okay. He was the keyholder. When I first
20 got there, he was the keyholder for the whole unit.

21 Q. And do you remember telling federal agents
22 that in March of 2018?

23 A. Yes, sir.

24 Q. I'm going to show you the last page you
25 were shown. Do you remember being shown a diagram

1 by Mr. Burke and the notes there?

2 A. Yes, sir.

3 Q. I'm going to show you in the second page
4 of those handwritten notes the bottom paragraph
5 there. Do those notes correspond with what you said
6 earlier about Ern Dog holding the keys to the entire
7 Southern facility and not Ben Clark?

8 A. Yes.

9 MR. SINDEL: Your Honor, I object. That's
10 hearsay. There is no foundation for the handwritten
11 notes.

12 THE COURT: Why wouldn't this be hearsay?

13 MR. BECK: I'm asking if it corresponds
14 with what he said earlier, not what it said.

15 THE COURT: Well, I still think it's
16 hearsay. Sustained.

17 MR. BECK: Your Honor, I think I can offer
18 that as a prior consistent statement.

19 THE COURT: Let me instruct the jury. If
20 that's all the purpose of it is --

21 MR. BECK: That's the whole purpose.

22 THE COURT: Ladies and gentlemen, you
23 can't consider this prior statement that Mr.
24 Hernandez made for the truth of the matter. You can
25 only consider it in determining whether the

1 inconsistent statements that the defendants offered,
2 the consistent statement that Mr. Beck is now
3 offering, the only purpose is to use it to determine
4 whether Mr. Hernandez is telling you the truth on
5 Friday and today.

6 MR. SINDEL: Mr. Beck, would you mind
7 showing me that just for a second?

8 MR. BECK: Sure.

9 THE COURT: Mr. Beck.

10 MR. BECK: For the record, it's Bates
11 68486.

12 BY MR. BECK:

13 Q. So Mr. Hernandez, did that correspond with
14 what you testified earlier about Ern Dog being the
15 keyholder at the facility?

16 A. Yes, sir.

17 Q. I think you said you were surprised Brian
18 and Raymond Rascon weren't charged in this case; do
19 you remember that?

20 A. Yes.

21 Q. Did you see Brian and Raymond Rascon
22 actually enter the cell when you were covering up
23 the cameras?

24 A. No.

25 Q. Do you know whether they refused to

1 actually do the hit of Fred Sanchez?

2 A. I don't know.

3 Q. You were asked just now by Mr. Sindel
4 about what would happen to you if you refused to
5 cover the cameras. Do you remember that?

6 A. Yes, sir.

7 Q. And what would happen to you if you
8 refused to cover the cameras?

9 A. They probably would have got me.

10 Q. Is that a rule of the SNM?

11 A. Yes, sir.

12 Q. Were you told about the rule that not
13 following orders causes a green light when you join
14 a gang?

15 A. Yes, sir.

16 Q. And after you were told that rule, did you
17 still join the SNM Gang?

18 A. Yes, sir.

19 Q. Now, we talked about your plea agreement
20 and addendum. But I think on Friday afternoon, in
21 haste, I didn't enter them into evidence.

22 MR. BECK: So the United States moves to
23 admit Exhibits 316 and 317.

24 THE COURT: Any objection? Not hearing or
25 seeing any objection, Government's Exhibits 316 and

1 317 will be admitted into evidence.

2 (Government Exhibits 316 and 317
3 admitted.)

4 BY MR. BECK:

5 Q. I'm going to show you page 2 of -- well,
6 let me show you the first page first of 316, please.
7 Do you recognize this as your plea agreement in this
8 case?

9 A. Yes, sir.

10 Q. I'm going to take you to page 28 of that.

11 A. Yes, sir.

12 Q. And does this in paragraphs 3 and 4 show
13 that you're pleading guilty to Count 3, which
14 charges violent crimes in aid of racketeering,
15 murder, and aiding and abetting?

16 A. Yes, sir.

17 Q. And in paragraph 4, are you now facing a
18 life prison sentence?

19 A. Yes, sir.

20 Q. And did you enter into this plea agreement
21 and plead guilty for your role in covering the
22 cameras during Fred Sanchez's murder?

23 A. Yes, sir.

24 Q. I'm going to show you Exhibit 317. Do you
25 recognize this as the addendum to your plea

1 agreement?

2 A. This is one of the pages that was on the
3 plea agreement, yes, sir.

4 Q. Okay. And the other attorneys talked with
5 you about the possibility to avoid a life sentence.
6 Do you understand that you have that possibility in
7 this case?

8 A. Yes, sir.

9 Q. And what's required of you to have that
10 possibility? To have that even as a possibility,
11 what do you have to do?

12 A. To testify and obey the laws.

13 Q. Do you have to testify truthfully?

14 A. Yes, sir.

15 MR. SINDEL: I'll object to the leading
16 form of the question.

17 THE COURT: Don't lead.

18 BY MR. BECK:

19 Q. And did you enter that plea agreement and
20 addendum to plead truthfully in 2017?

21 A. Yes, sir.

22 Q. And in 2017, when you pled guilty and
23 entered that plea agreement, that was before March
24 of 2018; right?

25 A. Yes, sir.

1 Q. And in March of 2018 -- well, do you
2 remember being asked by all of these attorneys about
3 watching Ben Clark hand back the paperwork to Kyle
4 Dwyer?

5 A. Yes, sir.

6 Q. And you told us about a conversation you
7 had with Ben Clark where he tried to remind you
8 about having the paperwork beforehand. Do you
9 remember that?

10 A. Yes, sir.

11 Q. Was that conversation before you and I met
12 together in March of 2018?

13 A. Yes, sir.

14 Q. And then in March of 2018, did you tell me
15 and Task Force Officer Chris Cupit -- what did you
16 tell us about what you remembered about Ben Clark
17 and the paperwork?

18 A. That he had given the paperwork back to
19 Kyle Dwyer and told Kyle Dwyer, "Everybody that
20 needs to see it has seen it."

21 Q. And did you tell us that you couldn't
22 recall seeing the paperwork beforehand?

23 A. Yes, sir.

24 Q. Was that after the conversation you had
25 with Ben Clark where he asked you about it?

1 A. Ben Clark had this conversation with me
2 when we got indicted.

3 MR. BECK: Nothing further, Your Honor.

4 THE COURT: Thank you, Mr. Beck.

5 Mr. Burke, do you have something else?

6 MR. BURKE: Yes, Your Honor, but I won't
7 be long.

8 RECROSS-EXAMINATION

9 BY MR. BURKE:

10 Q. I want to ask you about your very first
11 statement right after it happened. Okay? Isn't it
12 true, sir, that you said then that you saw Raymond
13 Rascon enter the cell of Fred Sanchez?

14 A. I don't remember saying that.

15 MR. BURKE: May I approach, Your Honor?

16 THE COURT: You may.

17 MR. BECK: May I see it, Mr. Burke?

18 BY MR. BURKE:

19 Q. Now, I have circled this so that's all you
20 need to read, I believe. But you can read anything
21 you want. Isn't it true that in your very first
22 statement you said you saw Raymond enter the cell
23 and then exit the cell breathing hard?

24 A. I don't remember.

25 Q. "Yes" or "No"?

1 A. I don't remember it, but it's on there,
2 yes, sir.

3 MR. BURKE: All right. That's all.

4 A. On the paper.

5 THE COURT: Thank you, Mr. Burke.

6 Do you have anything else, Mr. Beck?

7 MR. BECK: I don't, Your Honor.

8 THE COURT: All right.

9 MR. SINDEL: Your Honor, I would like --

10 THE COURT: Do you have something, Mr.
11 Sindel?

12 MR. SINDEL: Yes, Your Honor. It will be
13 short.

14 RECROSS-EXAMINATION

15 BY MR. SINDEL:

16 Q. When were you housed -- you're in federal
17 custody; right?

18 A. Yes, sir.

19 Q. When were you housed in Sandoval County?

20 A. I don't remember the exact date.

21 Q. It was 2017?

22 A. I believe so, yes, sir.

23 Q. When were you housed in Lea County? Late
24 in 2017?

25 A. Yes, sir.

1 Q. And as I reviewed the documents, it says
2 February 1, 2017 was when you pled guilty. Is that
3 consistent with your memory?

4 A. I don't remember the date. I just --

5 Q. Can I see the plea agreement? Do you see
6 there in the upper right-hand corner -- correct?
7 See the date?

8 A. Yes.

9 Q. February 1, 2017; right? And page 2 of
10 Exhibit 317. There is a date on that, February 1st,
11 2017; right?

12 A. Yes, sir.

13 Q. Speak up.

14 A. Yes, sir.

15 Q. And I think that you just testified just
16 seconds ago that you understood that addendum meant
17 that you have to testify and obey the laws; right?

18 A. Yes, sir.

19 Q. And you've already broken that, because
20 you used methamphetamine at Sandoval and Lea County
21 jails; correct?

22 A. Yes.

23 Q. You've already broken that agreement,
24 haven't you?

25 A. Yes, sir.

1 MR. SINDEL: That's all I have.

2 THE COURT: Thank you, Mr. Sindel.

3 Any further redirect?

4 MR. BECK: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BECK:

7 Q. Can I see Exhibit 317, please? Do you see
8 photograph 2 there, Mr. Hernandez?

9 A. Yes, sir.

10 Q. And does that paragraph mean that you
11 agree to testify truthfully and not exaggerate the
12 participation of any person in a crime?

13 A. Yes, sir.

14 Q. And is that what you did here today?

15 A. Yes, sir.

16 MR. BECK: Nothing further.

17 THE COURT: Thank you, Mr. Beck.

18 Mr. Hernandez, you may step down.

19 Is there any reason that Mr. Hernandez
20 cannot be excused from the proceedings, Mr. Beck?

21 MR. BECK: No, Your Honor, he may be
22 excused.

23 THE COURT: Any objection from the
24 defendants?

25 Not seeing or hearing any, you are excused